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DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR 1987

M-188

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

ORIGINAL

COMPLETED

691

SUBCOMMITTEE ON THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES

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D. NEAL SIGMON, KATHLEEN R. JOHNSON, JOCELYN HUNN, and ROBERT S. KRIPOWICZ, *Staff Assistants*

PART 9

Page
Navajo and Hopi Indian Relocation Commission Overview ... 1
Navajo and Hopi Indian Relocation Commission ... 169
Indian Education ... 389
Indian Health Service ... 273
Bureau of Indian Affairs ... 455

Printed for the use of the Committee on Appropriations

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U.S. GOVERNMENT PRINTING OFFICE

60-721 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
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DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS FOR 1987

TUESDAY, FEBRUARY 4, 1986.

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION OVERVIEW

WITNESSES

RALPH WATKINS, CHAIRMAN, NAVAJO-HOPI INDIAN RELOCATION COMMISSION

HAWLEY ATKINSON, COMMISSIONER, NAVAJO-HOPI INDIAN RELOCATION COMMISSION

SANDRA MASSETTO, COMMISSIONER, NAVAJO-HOPI INDIAN RELOCATION COMMISSION

CHRIS BAVASI, EXECUTIVE DIRECTOR, NAVAJO-HOPI INDIAN RELOCATION COMMISSION

MICHAEL McALISTER, ASSISTANT DIRECTOR, NAVAJO-HOPI INDIAN RELOCATION COMMISSION

PAUL TESSLER, ASSISTANT DIRECTOR, NAVAJO-HOPI INDIAN RELOCATION COMMISSION

IVAN SIDNEY, CHAIRMAN, HOPI TRIBAL COUNCIL

PETERSON ZAH, CHAIRMAN, NAVAJO TRIBAL COUNCIL

ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

GARY HARTZ, INDIAN HEALTH SERVICE

JEROME C. MUYS, SANTA FE SOUTHERN PACIFIC CORPORATION

ROMAN BITSUIE, COUNCILMAN, NAVAJO TRIBAL COUNCIL

CLAUDEEN BATES ARTHUR, ATTORNEY GENERAL, NAVAJO NATION, DEPARTMENT OF JUSTICE

Mr. YATES. This hearing is coming to order.

This will be the hearing on the budget for the Navajo-Hopi Indian Relocation Commission for fiscal year 1987. The President's budget has not yet been submitted and it will be made a part of the record when it is submitted.

[COMMITTEE NOTE.—The FY 1987 budget for the Navajo and Hopi Indian Relocation Commission is contained in Part 3 of the 1987 hearing volumes for the Subcommittee on Interior and Related Agencies.]

We thought it was important to have this hearing early in order to try to establish where the Commission is going and what has to be done to try to bring a constructive resolution. I think this hearing is going to be a very important one because of where we are. We are 12 years into a program that was supposed to last 7 years.

PROGRAM HISTORY AND COSTS

When the bill was passed in 1974, it was represented to the Congress that the cost would be approximately $41 million, it would take about seven years to dispose of the matter, and that there were about 1100 families that would have to be relocated under the program that was created by the 1974 law.

In contrast to what the Congress believed when it passed the 1974 law, we are 12 years into the relocation. According to the figures that we have, approximately $70 million has already been spent. Based upon the schedule that was placed in last year's record by the Commission, the Commission contemplates that it will take another seven years to settle the relocation.

It has a schedule that provides for the relocation of about 200 to 225 families per year for the next seven years at a cost of approximately $275 million, so that the total cost that is contemplated will approximate $325 to $350 million, assuming that there is not the kind of escalation in costs that has taken place since the law was passed by the Congress.

The newspaper reports that I have seen and the Appropriations Committee investigations have reported that in many respects the Commission has botched the job of relocation. It has failed in relocating families. It has failed to provide proper counseling for the relocatees. It has stated that, in great measure, the failures that have taken place have been a result of a lack of adequate resources furnished by the Congress.

I have reviewed the hearings since the start and I must say that as far as the budgets that were presented to the committee, the funds that were made available to the Commission were in great measure as much as the Commission requested, and in some instances, for particular purposes even more than the Commission requested.

PUBLIC COMMENTS REGARDING RELOCATION

We have been deluged within the last three or four months with mail from all over the country and from the Scandinavian countries telling us that we ought to repeal the 1974 law, and the 1980 law which amended the 1974 law, we ought to stop this forced relocation of the Navajo and the Hopi Indians, and we ought to let the Indian people resolve their own problems.

I don't know how that came about. Apparently there is a campaign throughout the country about the wrongs that the Congress is doing in trying to resolve a dispute and perhaps we should have left it to the courts. The District Court found that after going into the history of the relationship between the Navajo and the Hopi in that area that the Navajo had encroached upon Hopi lands and that a line should be drawn establishing land that could be properly designated as Navajo land and land that could be properly designated as Hopi-owned land. The problems that have taken place in great measure have related to the relocation of the Navajo people from what the court designated as the Hopi land.

In retrospect and in hindsight, there are a number of Members of Congress who wonder whether what the Congress did in 1974 was the proper path to take; whether it might not have been better had the Congress left it to the courts to determine. Had that been done, the outcome would inevitably have been that in order to enforce the decree that the court signed, it would have been required to send marshals out to the Hopi land to evict the Navajo, and I think it might have resulted in some bloodshed as a result.

The court found that the Navajo and the Hopi were entitled in the first instance to joint use of the joint-use area. It found also that the Navajo were encroaching on Hopi rights.

SETTLEMENT PROPOSALS

Articles that I have read have indicated that the Navajo offered to pay for the Hopi land. The Hopi refused it. One of the articles I read indicated that the Hopi had offered—I want to confirm this with Chairman Sidney when he comes in—has he come in yet? No? Or Mr. Zah.

Mr. Zah, are you here? Did you want to come up to the table because I think you have an interest in this proceeding.

One of the articles I read indicated that the Hopi had sought to settle the controversy by offering to exchange Big Mountain for some coal land interest. Is that a correct statement?

Mr. Zah. Well, Mr. Chairman, I think Big Mountain is only one of the problems.

Mr. Yates. I know that. I am just trying to get his story at this point. I am trying to find out whether there was an offer of settlement that was made by the Hopis.

Mr. Zah. Not to my knowledge, no.

Mr. Yates. Not to your knowledge? Okay. I know that you have made offers to Hopi.

Mr. Zah. Sure.

PENDING COURT CASES

Mr. Yates. The controversy that we have before us in this hearing is only one of the land controversies between the Navajo and the Hopi, is that correct?

Mr. Zah. Sure.

Mr. Yates. Are you in court now on some of those cases? Have the Hopi filed suit as they said they were going to?

Mr. Zah. Mr. Chairman, I have with me Claudeen Bates Arthur, who is the Attorney General for the Nation.

Mr. Yates. Claudeen, what is the status of the other controversies?

Ms. Arthur. We have presently in court a number of damage claims against the Navajo Nation and the United States that have been filed by the Hopis. We have an accounting case and another case we call the use case, a post-partition rent case, and we have a case in court in which the Hopis are claiming 7 million acres in the 1934 reservation area.

Mr. Yates. Where are you with respect to Moencopi? What about that controversy? Is that part of this or the subject of another dispute?

Ms. Arthur. It is another dispute but also a part of the law that was passed by this Congress.

Mr. Yates. It has gone in and out of this case, hasn't it?

Ms. **Arthur**. Yes.

Mr. **Yates**. It is interesting, in retrospect, that there was no effort made to settle this dispute in the same way as other disputes were settled. I think of the controversy in Maine, the Penobscots and the Passamaquoddy were given a cash settlement in addition to some land. I understand there is a settlement pending in the city of Tacoma controversy where the Puyallups have filed a claim.

I was told that too seems to be evolving into a settlement that will require a cash payment by the Federal Government and other matters. But the point I am trying to make is there was no relocation that was required under the terms of those settlements.

This case seems to be one of the few, if not the only one, that I have seen which required a relocation of the tribes. We have spent almost $100 million now and one wonders if we had offered $100 million in 1974, the case might have been settled at that particular time. Now we have before us the prospect of spending another $275 million in taxpayers' money over a period of seven or eight years with the hope—I don't know whether to use the word "expectation," but the hope certainly that perhaps this will result in the settlement.

But, again, as I pointed out, this is only one in the series of controversies between the Navajo and the Hopi. If there is some way of working it out, it would be well. Having said all this, where do we go from here? What does the Commission want us to do?

COMMISSION PLAN

Do you want to continue to adhere to your schedule? As I remember your testimony last year, Mr. Watkins, you want us to spend approximately $275 million over the next seven or eight years to relocate and to settle—not only to settle the controversy, but to relocate the people who have to be moved; is that correct?

Mr. **Watkins**. That is if you want us to fulfill the law as written, yes, sir. But we have made other overtures during the ensuing year and you have made a very broad statement there. Did you want me to answer some of those questions?

Mr. **Yates**. Of course I do.

If you feel that anything I said is unfounded in law or in fact, please tell me so.

Mr. **Watkins**. I am not going to speak about the law because I am the layperson. We have one attorney onboard. Of course, you know, Mr. Atkinson, Ms. Massetto.

Mr. **Yates**. I know them.

Mr. **Atkins**. And Mr. Chris Bavasi back here and Merrs. Mike McAlister and Paul Tessler.

Mr. **Yates**. Are you and Mr. Atkinson talking to Ms. Massetto this morning?

Mr. **Atkinson**. Oh, yes.

Mr. **Yates**. Mr. Sidney, would you like to sit down at the table? Glad to see you.

Go ahead, Mr. Watkins.

Mr. **Watkins**. First of all, we were not aware this was a budgetary hearing, but we will play it by ear, Mr. Chairman, and do what you want us to do.

Mr. YATES. If you prefer to consider it as an oversight hearing, we will do that. It is both oversight and budget.

Mr. WATKINS. It is good for all of us to be here anyway. I didn't make any—mark down anything as you went through the comments there.

Mr. YATES. Would you like to have my statement?

Mr. WATKINS. Yes, but first of all, I would like to say that some people have told you that the Commission has botched the job. I disagree wholeheartedly. I think the Commission and its employees are complying with the law and are doing everything humanly possible to make something that nobody else wants to do happen and we know we have no friends, and those letters you spoke of from all over the world, I am getting them as chairman of the committee.

Mr. YATES. What do you mean you have no friends?

Mr. WATKINS. Nobody likes the Commission.

Mr. YATES. Well, based on my statement, I would say deservedly so, wouldn't you?

Mr. WATKINS. Well, Mr. Chairman, I can't fight with city hall. If you want to direct questions to me relative to anything, I will answer them.

Mr. YATES. No. You go ahead and make your statement.

COMMISSION RECORD OF SUCCESS OR FAILURE

Mr. WATKINS. I am trying to recall what you said in the statement relative to the Commission.

Mr. YATES. I said the Commission had botched the job of relocation. You have been in it since 1974, not you personally. The Commission has been in. I think you have been in for two years now.

Mr. WATKINS. Three years.

Mr. YATES. Three years. And I think that from all reports certainly in the first ten years there was little done in the way of relocation and that which was done in the field of relocation was not done very well according to the reports we have received and the report that was filed by our investigative staff.

Secondly, that the Commission botched the job of counseling the Indian people. As they were moved, they were not counseled before nor were they counseled after they were relocated. As a result, a third of the families that were relocated to new housing wound up selling their houses and I don't know where they have moved.

I don't know if the Commission knows where they have moved. The houses that they were in were sold to other people, I am told by investigators they were subsequently bought by the Commission and sold to other relocatees.

Those, in essence, were the charges that I made against the Commission in my statement.

Mr. WATKINS. All right. Do you want to speak to the houses first, sir?

Mr. YATES. Whichever way you want to proceed.

Mr. WATKINS. Paul, do you want to respond to that?

RELOCATEE RETENTION OF HOUSING

Mr. **Tessler**. Mr. Chairman, in terms of people who have moved, there is no question that we have had problems with relocations. Some of the folks that got houses no longer own them. Some of them were taken advantage of by unscrupulous real estate people. Some of them sold them for the same reason that the general population sold their homes.

Of those who no longer own their homes, certainly some of them have moved back to the reservation. Others have moved to other places if they sold homes for a profit or for new jobs or for education. We don't know where everyone has moved to, but we have followed up with the relocatees who have sold their homes by and large.

Currently, as a result of that process, we have instituted procedures. One was a new restriction for a period of two years which prevents relocatees from selling or encumbering their homes unless they consult with the Commission before they do that. Additionally, to prevent people from moving off reservation where they might lose their homes for taxes or non-payment of mortgage, we instituted procedures requiring that they have sufficient income to support the home.

I believe both of these procedures will through time show a reduction of the people who no longer own their homes. I believe those practices are decreasing.

Mr. **Regula**. Mr. Chairman.

Mr. **Yates**. Mr. Regula.

Mr. **Regula**. Are these homes located on real estate that is not part of a reservation?

Mr. **Tessler**. Correct.

Mr. **Regula**. Do the recipients get a fee simple title?

Mr. **Tessler**. Yes, they do.

Mr. **Regula**. What was the source of the land to provide the relocation? Was it a purchase of land by the Commission? Where did you get the land?

Mr. **Tessler**. The sites are scattered in most cases around the Navajo reservation, in border communities.

Mr. **Regula**. Were they sites that were purchased?

Mr. **Tessler**. Individual home sites, city lots, regular houses in the city.

Mr. **Regula**. When the family moves from the disputed land into this home, they get a fee simple title which enables them to convey it as they choose?

Mr. **Tessler**. Correct.

Mr. **Regula**. Are they conveying to non-Indians or to Indians or what? You say a number of them have been sold. Are they sold to anyone or for any purpose?

Mr. **Tessler**. In most cases they have been sold to non-Indians. The reasons why people sell? Is that what you are asking?

Mr. **Regula**. Some of that, yes.

Mr. **Tessler**. In some cases they can't keep up with the utility payments and taxes, in some cases they sold for a profit. In some cases they have been taken advantage of and offered real estate deals to trade down, if you would.

Mr. **Regula**. Once they sell do they go back to the Navajo reservation normally?

Mr. **Tessler**. In some cases, they do, yes.

Mr. **Regula**. Do they go back onto lands that are not in dispute between the two tribes?

Mr. **Tessler**. I believe they have returned to other places on the reservation.

Mr. **Regula**. On the Navajo reservation?

Mr. **Tessler**. Correct, but not the places they came from in most cases. When they sell and relocate, we purchase the dwelling from them and that property is disposed of. It is turned over to the Hopi tribe and in many cases salvaged or if it is usable it is kept under Hopi jurisdiction.

Mr. **Regula**. When you purchase it, is that money applied to the cost of the one you provided for them?

Mr. **Tessler**. That is correct.

Mr. **Regula**. You may add some if it is necessary to acquire the new property?

Mr. **Tessler**. That is correct.

COMMISSION COUNSELING

Mr. **Yates**. This is what the Commission told us in their reply to our investigative report last year on this. Commission counseling services, "The Report's criticism of the counseling program is inaccurate, unfair and does not take into account the general lack of education and degree of acculturation of relocatees. The Report recognizes, but fails to take into account that the majority of the relocatees are in some stage of transition from a traditional way of life to grappling with life in the 20th Century."

We know that. We recognize that.

Just a minute, Ms. Massetto.

That is why we think the counseling has failed, because it failed to take that into consideration. "The Report states that the primary reason for the resale of relocatee homes off-reservation is the failure of the Commission to adequately prepare the relocatee to make the transition to off-reservation life. Anyone familiar with this history of Indian affairs will realize the effort to make a transition between a traditional reservation life and urban life has been a problem for which the entire Federal Government has been unable to find an adequate solution."

Well, what you are doing is dismissing it by that. You are saying, well, the Federal Government has never been able to do it so we don't have to do it but that does not mean that you don't try to do an adequate job. The record shows there was no adequate job of counseling either before or after.

Now, Ms. Massetto, you may speak.

Ms. **Massetto**. The only thing I wanted to add, Mr. Chairman, to your comments is that——

Mr. **Yates**. Incidentally, I was reading from the Commission's own statement. That isn't our statement. The Commission is acknowledging the defeat in counseling because of the character and the background of the Navajo people who were relocated saying that they are not yet in the 20th Century, therefore, we cannot counsel them.

Go ahead, Ms. Massetto.

Ms. **Massetto**. I don't know how to add to the Chairman's comments, because I share the comments of the Chairman. The fact of the matter is that this committee last year without our own request gave us $150,000 for post-move services, and they are greatly needed at this point in time. We have one counselor who is a trained counselor and a support personnel person who is handling almost 500 cases of post-move counseling and it is inadequate, and it has been a problem.

[Committee Note.—The FY 1986 Continuing Resolution provided $250,000 for post-move counseling.]

Mr. **Yates**. I should be fair and say the Commission says, "The Commission has consistently identified the need for additional resources. These resources have not been made available." Now, is that true of this committee? This committee has made available all the funds that you wanted to make available.

We gave you an extra $250,000. All right, Mr. Atkinson shakes his head. Tell us where we have been deficient.

Mr. **Atkinson**. When we first appeared before you we asked for monies——

Mr. **Yates**. Going back to 1975 now?

Mr. **Atkinson**. Yes, sir. When we first appeared to your committee—and it might have been 1976—we asked you for funds and said that the Navajo Tribe and the Hopi Tribe have been misled by the Federal Government so many times they really don't think the money is there because they get promises of money. We discussed that with you and we received no money, extra funds.

Mr. **Yates**. For counseling?

Mr. **Atkinson**. Yes, sir.

Mr. **Yates**. In 1976, you weren't ready to relocate anybody.

Mr. **Atkinson**. No, sir, we were not.

Mr. **Yates**. You didn't relocate anybody for years after that.

Mr. **Atkinson**. Years is a broad statement. Let's be definitive.

Mr. **Yates**. When was the first time you started to relocate people?

Mr. **Atkinson**. February 1977. You know what happened that year. In 1979—we started on February 10 of 1977 and then we relocated people. Then all of a sudden the redesignating of the Hopi Partitioned Land and the Navajo Partitioned Land was thrown out by the Ninth District Court or sent back.

It was not approved then until August 31 of the same year and we began to move again, but all of the work—

Mr. **Yates**. You had a new line set up is what you are saying.

Mr. **Atkinson**. In essence, it was the old line with minor adjustments. For that period of time on May 15 to August 31, relocation came to a halt. Now, the Navajo Tribe, the Window Rock element of the Navajo Tribe or the elected officials there sent out people and said relocation is over. You don't have to relocate.

We had about that time about 12 planning committees and were never able to put them back together again. I don't know whether it was a lack of faith in us or a destruction of our credibility, but you know we have moved as many people as we have had money to move.

Now, I am making that statement without talking to Mr. McAlister. We can ask him but you said that in the report or in the language it says you must appraise all the buildings, do an appraisal of all of the Navajo property, of the real property in the HPL. We did that. We have never had one Navajo come back and say your appraisals were unfair.

The other thing that we were to do is take a census. Now, when we took that census, the Navajo people went out and a very prominent Navajo ran it for us. So we feel that the census that we took in that time was probably the most accurate census that ever has been taken.

We have put a lot of money into it. So we took that census. We took the appraisals and then we wrote the plan for it and sent it to you and I think you had something like 30 or 60 days to either accept it or reject it and you accepted it without one Congressman or one Senator, no one objected to it.

I suppose that is pretty unusual in Congress where there is unanimity of that. We can go back in the record and you will see.

PASSAGE OF P.L. 93-531

Mr. **Yates**. The record speaks for itself. What I have done is I have reviewed all the hearings that have taken place. I have gone back into the original debates on the 1974 Act in both the House and the Senate and read the statements by Senator Metcalf and Senator Jackson and Senator Fannin of Arizona and Senator Goldwater, and I have read the debates in the House. I am trying to find out why we passed the Act at that particular time.

Congress was very optimistic at that time about passing the act. I have told you what Congress thought. Sure, we will get the relocation over in seven years. It will cost us $41 million. The numbers have changed over the years apparently. I think as I read the record there was some statement in here by the Commission to the effect that the census it received from BIA was dreadfully understated.

Mr. **Regula**. Will you yield, Mr. Chairman?

You say the numbers have changed. Are you talking about the numbers of people that need to be relocated?

Mr. **Yates**. The numbers of people we were told needed to be relocated have varied up and down.

Ms. Massetto.

Ms. **Massetto**. In those same early 1974 hearings, Thayer Scudder, who was testifying as an expert on relocation, testified that there would be two things that would happen with the relocation. One would be an underestimate of how many people were going to be relocated and also an under-capitalization of the program.

Commissioner Lewis also stated at that time that they were not quite sure how many people needed to be relocated so that even back in 1974 people were not really aware of how many people needed to be relocated and how much it was going to cost.

NEW LANDS FUNDING

Mr. **Yates**. Right. I read from the Commission's report in reply to our investigative report, "The Commission has stated that new lands are essential to the provision of a new life for those families who are presently residing on the Hopi Partitioned Lands. To date, the Commission has received no funding for the development of these new lands."

Well, our new budget provides some of the funds—$8 million I think was in the new budget, $22 million for construction, plus $15 million. "To date, the Commission has received no funding for the development of these new lands. The Commission has proposed to the Office of Management and Budget an outline and a budget for the development of these new lands."

[**Committee Note.**—In the FY 1986 Continuing Resolution, $49,491,000 was provided for this effort, $22,000,000 in BIA construction, $5,000,000 in the Indian Health Service and $22,491,000 for Relocation Commission.]

Now, what did we go and do? Did OMB turn you down on that?

Mr. **Atkinson**. We submitted a full budget at one time that——

FY 1987 BUDGET REQUEST

Mr. **Yates**. What is the status for this year? Have they turned down funds for this year, too, for 1987?

Mr. **McAlister**. Mr. Chairman, as you are aware, the President's budget has not gone forward. Our mark for this year is only slightly higher than last year. We did ask for more than we received.

NEW LANDS

Mr. **Yates**. "The Commission has also identified to Congress the need for funding to develop these new lands and the specific resources needed. Land has now been acquired for relocation sites."

Those are the ranches, aren't they?

Mr. **Watkins**. Yes, sir. The bottom line of this seemingly endless maze of dual mandates is that clarification from Congress is required to resolve these conflicts.

Mr. **Yates**. Now, you have underlined that. You go on to say, "Congress has said the relocation must be completed by July of 1986. Congress has also said that new lands are the single most important factor in easing relocation. The new lands will not be fully acquired and developed before the deadline."

The deadline is July 6 of this year. "The Commission presently has no funds to develop the new lands and is left with the situation in which there are a number of families who literally have no place to go in terms of selecting relocation sites acceptable to them." Is that still true?

Mr. **Watkins**. We have all of the new lands, Mr. Chairman, and the moneys for the development of the lands, I understand, Mr. Swimmer, you have the moneys.

Mr. **Yates**. If you are going to continue to identify the resources necessary to do the job, an attempt must be made to minimize the adverse impact of relocation directed by the Congress, if necessary. Now, there are still complications. You have new lands. You were trying for six ranches, as I remember. There was the Wallace Ranch.

Mr. **Watkins**. Spurlock, Kelsey, Roberts, Wallace and Fitzgerald.

Mr. **Yates**. The Navajo have two ranches, they are supposed to go in there. But as far as I have read in the record I haven't seen any agreement by Mr. Zah to turn those ranches over for relocation, we will come back to that.

You asked him to do it last year in the hearings and Mr. Zah said in view of the record made by the Government he was not sure that he was going to turn the lands over; is that correct?

Mr. **Zah**. Sure.

Mr. **Watkins**. In regards to the Chairman, he has since sent some correspondence advising us that he cannot do anything until we get all the ranches. We have now acquired the ranches. I have sent him a letter as early as 5 or 6 days ago.

I don't even know if he has been there to get the correspondence—asking him to pursue that.

Mr. **Yates**. To pursue it.

Mr. **Watkins**. Yes, sir, for the lands.

Mr. **Yates**. So now Mr. Swimmer has the money for developing the new lands, right, Mr. Swimmer? For the record, this is Mr. Swimmer who is the new Assistant Secretary in the Department of the Interior.

I don't know whether you are also, Commissioner. Do you have both titles?

Mr. **Swimmer**. I have chosen to consolidate the positions, Mr. Chairman.

Mr. **Yates**. You are the Commissioner and head of BIA, as well as being Assistant Secretary.

Mr. **Swimmer**. I understand from the legislation that we have received $22 million in our budget for this fiscal year and possibly beyond that, but the money is for housing to be developed on the new lands. As part of our responsibility for doing that, we would do archeological studies, provide rights-of-way and easements. The planning effort to develop the new lands still remains with the Commission.

They have a budget of, I believe, $22.4 million to do that. But that is the engineering work, site locations, development of the sites and everything else.

Now, in that——

Mr. **Yates**. Who has that responsibility? The Commission has that?

Mr. **Swimmer**. The Commission would have it.

Mr. **Yates**. Does it make sense to have this split responsibility?

Mr. **Swimmer**. Well, you could look at it from two positions. One is we can't spend our money until the Commission provides us a site and the name of the family. On the other hand, if we do continue with the split as we are, then the counseling of the family which would need to be done in order to locate them on the new land in a place that is suitable is going to have to be one of our responsibilities.

If we don't achieve the counseling and work out the grazing units and the locations and the places where the people feel comfortable with the houses, then obviously the site plan that we get could be deficient. On the other hand, if we simply take individuals and try to put them onto the new land without that kind of counseling, it is going to fail as has happened in the past.

So there is a problem with us receiving that authority. I am not sure that we actually——

Mr. **Yates.** Which authority?

Mr. **Swimmer.** The authority to build the houses, the $22 million. This is the first time the Bureau of Indian Affairs has directly been involved in a relocation process. I understand in 1980 we were asked to remove ourselves even further from whatever we were doing. By virtue of this year's appropriation language, we are brought into the process at least for the construction of the housing and setting up some rights-of-ways and things, but it does create some potential conflict in getting site work done and moving the family and getting the family involved in the site work.

BIA AUTHORITY

Mr. **Yates.** Mr. Swimmer, should you be doing the job of relocating? Did the Congress make a mistake in the first instance in establishing the Commission rather than letting BIA do it—BIA having been the traditional agency that has been involved with Indian affairs for the last century. Now the Congress is moving BIA into the picture and you now have the split.

Do you now have a crack into which all this will fall as a result of it? Should you have the job of selecting and completing the relocation? Should the Congress give you that job?

Mr. **Swimmer.** Mr. Chairman, I would hesitate to even request such a responsibility. If you are asking should the Bureau of Indian Affairs have it, perhaps I would agree with that. If you are asking if we are prepared to do it or we could do it in the present context, I am not sure that without a lot of additional work we can.

I certainly won't speak for my predecessors. I think if anything there was a concerted effort to avoid putting it into the Bureau of Indian Affairs.

I am seeing this at a late stage, and please, please consider my comments as being new to this whole effort. I have not done nearly the research you have done. I have attended a meeting recently with the Commission. I have interviewed with both chairmen of the tribes and I have done extensive reading.

RELOCATEES REMAINING ON HPL

I don't have any definitive answers and certainly could not go back in history and say someone has been right or wrong. I see us, the Federal Government, however, at a point where the relocation, at least the resettlement from the Hopi Partitioned Lands, is down to approximately 208 families who have signed a contract under which we are contractually bound to provide new homes for and grazing units and all. The new land has been acquired and we really are in a position of getting the planning done, doing the counseling that is necessary with these families, and providing the new homes as we have agreed to do and that is apparently our work now.

A lot of that is going to be our work and I think the Commission has engineers and private contractors that are doing some of the engineering. I am not certain that we wouldn't be in a position to complete the process of relocation.

I think that a lot of the Commission's work over the past 11 years has been to bring us to this point perhaps, but I certainly would hate to see——

Mr. YATES. Where did you get the figure of 208? As I read the record, the Commission still has 1600 families to relocate.

Mr. SWIMMER. The Commission from the best information that I can put together, we have 932 housing units that have been made available by the Commission. We have 1251 families that are unserved, that did, in fact, move or received certification at some time by the Commission.

They are not physically living on HPL, but they would be eligible for benefits. We received a list from the Commission about two weeks ago and our field people went to the Hopi Partitioned Land and visited the home sites that are still there.

In doing that, we put together what we believe to be a pretty sound number that there were 208 families living there that, in fact, had signed agreements to relocate. There were about 31 families living in about three areas, one at Big Mountain, one on the south end, and a couple of other remote spots that had refused to sign an agreement to voluntarily relocate.

So, about 239 appear to be physically resident on Hopi Partitioned Land. That number can change, in fact, daily. In 11 years it has changed, because families grow up and get married, they live at home, become extended families and would be entitled to some benefit, I presume.

Mr. YATES. Do you agree with their number, Mr. Zah?

Mr. ZAH. Mr. Chairman, I have with me today Roman Bitsuie, a member of the tribal council that lives right by Big Mountain who has done some enumerations out in those communities, and with Claudeen, has put the numbers together. If you don't mind what we would like to do——

Mr. YATES. What numbers do you have?

Mr. BITSUIE. Mr. Chairman, we have done some enumeration in the fall of 1985 between the months of October and December and of the people that we have found on the Hopi Partitioned Land we have enumerated over 1,000 families. These are heads of households and of that many, half of them are what the Commission calls the currently continuous domiciled or the actual residents of the Hopi Partitioned Land.

Half of them were not enumerated either by the BIA or the Relocation Commission and there are some that the heads of the household, mostly the elderlies, did not know where their children were. So we come out with over 1,000 families.

These are not including the people that were off the reservation that are employed or going to school or in the armed services.

RELOCATEES REMAINING ON HPL

Mr. SWIMMER. Mr. Chairman, I would not disagree with that number. On the other hand, I would ask for clarification because I

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suspect in that number of a thousand-some, of the 1251 families who have been determined eligible are, in fact, immediate relatives of the 208 families that we determined to be physically resident on the HPL that, in fact, claim a residency by virtue of an extended family.

So if we talk about the total number of families who are unserved, we are talking almost 1500. That is true. The total number of families physically resident, at least from our numbers in an actual count, and I agree this could vary by a few, but very few, it appears to be about 239 on Hopi Partitioned Land that would have to lose their homes if they are resettled.

Mr. **Yates**. You are saying there are no real differences between you and the figures testified to by the member of the Navajos, yours are families and his are people. The numbers may be consistent. The numbers of the people may be included within the 208 families. Do I understand your point?

Mr. **Swimmer**. No, sir. Not completely. I am suggesting that there are, in fact, nearly 1500 families, or heads of household, who are eligible for relocation benefits.

Mr. **Watkins**. Who are certified.

Mr. **Swimmer**. Certified eligible. Of that number, approximately 239 heads of household physically reside on Hopi Partitioned Land. Now, to add to his number, I would ask him to respond to this, but I suggest that some of those 208 families, heads of household, have extended family, relatives, sons, daughters, brothers, sisters, who, in fact, would consider that as home, that are presently living elsewhere.

They have, in fact, left HPL if they were there and they are out there in what I call the state of limbo, the people who have not been served for the past ten years that are out there waiting to be served and, in fact, may travel back and forth.

Mr. **Yates**. What do you mean by "served"?

Mr. **Swimmer**. Provided a house by the Commission under a signed contract to provide them a house and that, in fact, for whatever reason left HPL and are waiting for their home.

Mr. **Yates**. Mr. Sidney, do you have any comments on these numbers?

Mr. **Sidney**. Yes, I do, Mr. Chairman. I believe I have gone to such hearings, Mr. Chairman, and pretty much heard a dispute over numbers back and forth. Also let me apologize for being late. I brought one of the elder chiefs with me.

Mr. **Yates**. Do you want to bring him up to the table with you?

Mr. **Sidney**. I would like to. He is a little slow. This is Mr. Leslie of the First Mesa of the village. I thought I would bring him along because traditional leaders are not in agreement with the Chairman or the tribal council.

Mr. **Yates**. Is he a traditional leader?

Mr. **Sidney**. Yes, he is. He is one of the highest of the leadership in our religion. But I might respond by saying that I was very much interested in your question on BIA versus Relocation Commission. I want to state here, for the record, I feel it is because of BIA's inaction that we are where we are today and where the Navajos have had 14 Executive Orders to get much of the Hopi lands. I believe the law contains——

Mr. YATES. You are not talking about Mr. Swimmer, you are talking about his predecessors, his predecessors over the last 60 years.

Mr. SIDNEY. That is right. I am getting to that to clarify my point. In the law it says that the Federal agencies must cooperate. Memorandums of understanding should exist. I think I also need to say for the benefit of my friend, Mr. Zah, is that I think we are here today, too, because of the unwillingness of the past Navajo administrations to cooperate.

In order to help your people to comply with the law, it is up to us as tribal leadership to have people cooperate. I have not heard that. In fact, the last six months we spent money on trying to get an extension, but never did we hear from the Navajo tribe we want an extension because we want to help our people move.

RELOCATEES REMAINING ON HPL

Never was that stated. I want to say here that I believe that I have faith in the Congress today, as well as the Relocation Commission as it exists today, and Mr. Swimmer.

How long are we going to continue to dispute our numbers? Are we talking about extended families or are we talking of people that are actually there now? The extended people you are talking about, people that have already relocated, have found again full employment off the reservations and support our direction toward self-sufficiency and self-determination and less responsibility on the Government and I know that the Navajos have responded in the past saying that it is the Government's fault and we are not going to just let them go by not giving us the money to move but at some point we have to take the responsibility.

The elder is here with the interest to state for his people that we are still waiting to use our lands and I would like to have the committee to go forward with the relocation and that we expedite the matters. I know that Mr. Swimmer looking over his records, and I see yours, your investigative reports that I have been made aware of, but I want to tell you that when the investigation was conducted by your office, I was never asked any kind of questions because I wanted to talk about particularly what the Navajo tribe was really doing.

We seem to place emphasis on the Relocation Commission and the BIA and not really why these people had to move to nearby communities simply because the Navajo Tribe passed a moratorium to keep their people from moving onto their own lands. That is the question I feel, that needs to be answered.

I feel that the numbers are more of the 208 that Mr. Swimmer is talking about because in 1974 the Navajos agreed with the BIA enumeration that there were 680 families to be relocated. That was the number to be agreed on, but every year heads of household multiply because those who were 17 last year are now 18 today and they are qualified. I feel that we need to put a damper on this and just complete what we are doing.

I feel the realistic numbers are the 208 that Mr. Swimmer talked about. They are being verified but I attended a meeting where the Commission gave over its records to the BIA and the BIA gave them their reports. Together, they meshed the two and came out with one report, rather than all these years everyone has been having their own numbers.

I believe that is a step toward a better way how we can utilize the funds.

Mr. YATES. You know the Commission's schedule, 1993 for completing the program.

Mr. SIDNEY. Yes.

Mr. YATES. If I understand your testimony correctly, you were in favor of it.

Mr. SIDNEY. No. I was not.

Mr. YATES. I thought you said you were in favor of what the Commission was doing.

Mr. SIDNEY. We are in favor of it. What I am saying is that there was the deadline. There has been a lot of foot-dragging going on. The relocation should continue forward.

I feel that a lot of the people could be moved and let the deadline come and let's take control and say whose left out there, how many are they, and why are they still there.

RELOCATEES REMAINING

Mr. YATES. The Commission testified last year and, as I understand it, it has not changed its mind as it comes in today that it has about 1600 families still to be relocated and that it will relocate them on the basis of approximately 200 to 225 a year, that the Executive Director last year, Mr. Goodrich, testified in response to a question that the most that the Commission could move in any single year was 225 families.

Now, it varies between 200 and 225 depending upon the amount of money that Congress makes available for the purpose.

Mr. WATKINS. That is the point, Mr. Chairman.

1993 was what we said to you but you have given us new monies so now we have changed our time frame because of new monies.

Mr. YATES. Okay. What is your time frame now?

Mr. SIDNEY. Mr. Chairman, while he is getting his time frame, my point is that while they are saying that we can move this many, how can you say the relocation we have completed in X year when the backdoor is completely left open? Every year more people are being eligible.

Mr. YATES. No, no. As I understand it, almost everybody has agreed on the numbers. The Commission—Mr. Swimmer, and the Navajo are not too far apart on their numbers, as I understand it. There is a question of reconciliation between family and individuals to some extent.

Mr. SWIMMER. Where they are actually physically resident.

Mr. YATES. So there is no dispute on that. Now, the Commission has come forward and said the testimony they gave last year should not be accepted as the basis for what they are saying this year because the Congress has made more money available to them; is that correct?

Mr. WATKINS. That is correct. That is what I am saying.

TIME REQUIRED FOR COMPLETION OF RELOCATION

Mr. **Yates**. How do you propose to amend the time for now? Ms. Massetto is shaking her head no.

Ms. **Massetto**. I don't understand that at all. Money has nothing to do with time and relocation. The relocation has to do with planning, with putting infrastructure, with counseling, with moving people.

Mr. **Yates**. You are prisoners of time on that, aren't you? You can only do so much in a particular time.

Ms. **Massetto**. That is correct. You could throw $100 million at us in the next six months, and we couldn't build one house.

Mr. **Yates**. Not even one house?

Ms. **Massetto**. No, I doubt it, not on the new lands. There is not anybody identified to go to the new lands yet. Not one person knows where their home site is out in the new lands.

Now, we have had some conceptual designs about where some houses may happen to go, but there are no grazing units settled with the people out there. Designs have been made, but they are not settled.

Mr. **Yates**. You have got to wait until BIA does something out in the new lands, too, don't you?

Ms. **Massetto**. No, no. BIA is just standing in the wings.

Mr. **Yates**. I thought they had to lay out the plans for the resettlement.

Ms. **Massetto**. No, no. They are just sitting there waiting for us.

Mr. **Swimmer**. Until we get direction from you, we are limited to building houses, Mr. Chairman. We can't plan the use of the land.

Mr. **Yates**. Who is in charge of laying out the infrastructure?

Mr. **Swimmer**. The Commission is.

Mr. **Yates**. How are you doing that?

Ms. **Massetto**. No, no. It is not that. It is not that simple.

Mr. **Yates**. Okay. Let's simplify the complication.

Ms. **Massetto**. I will try. You have appropriated money to IHS. You have appropriated monies to roads, health services. So, you have different departments doing different infrastructure, okay?

Mr. **Yates**. Now I know what you mean.

Ms. **Massetto**. We are charged with putting a plan together. Our Act specifically requires we have a detailed plan, people identified to a site, that the plan have the infrastructure there, and that we minimize the impact of relocation which I attribute to mean counseling and similar matters.

So, we have that specific obligation under the 1974 Act. That is not mentioned.

Mr. **Yates**. You also have the obligation to provide safe, comfortable and efficient housing, haven't you?

Ms. **Massetto**. And that is shared with Mr. Swimmer now, because he has to go out and——

Mr. **Yates**. He has to do that.

Ms. **Massetto**. We have to do off-reservation and off-new lands. We are still building houses for people that are moving off reservation or moving on to the Navajo reservation except the new lands.

DIVIDED RESPONSIBILITY

Mr. **Yates**. Ms. Massetto, you have the job of drawing the plan for the lands. Suppose Mr. Swimmer doesn't agree with the plan and says this is a terrible plan? I can't build houses in accordance with that plan.

Ms. **Massetto**. He better object, because he has a trust responsibility as well as we do. We share that responsibility.

Mr. **Yates**. As of now, then, you have a divided responsibility.

Ms. **Massetto**. That is a serious question.

Mr. **Yates**. You may wind up in frustration.

Ms. **Massetto**. That may happen.

Mr. **Watkins**. Mr. Chairman, may I ask Fred Craft, our Washington counsel, he just wants to make a comment. Fred.

PROGRAM COMPLETION

Mr. **Craft**. Mr. Chairman, I think in terms of the monies, what happened with regard to the time frame as compared to what the Commission said last year about 1993 and what is different today, is the fact that if you look at the class of relocatees as two different groups, the one group that is the most pressing, which the Congress has ordered us as a Relocation Commission to take care of to begin with are the relocatees that are disturbing Chairman Sidney and the Hopis.

Those are the ones that are currently residing on the Hopi Partitioned Land. That is some 300, plus or minus, families. The monies that are available, and the thing that changes the time frame for the Relocation Commission which would affect the budgets and which was not available last year for the first time, the Congress made available a total of $48 million to build homes.

Twenty-two million dollars to the BIA to build homes for people living on the joint use area today, the Hopi Partitioned Land, and they would be building homes, BIA, on the new lands and the new lands only.

The Relocation Commission has some $15 million. It was $15.9 million less Gramm-Rudman, less a few more dollars. Those monies would be available again to the Relocation Commission to take care of the citizens who are living in the Hopi Partitioned Land.

The point that the chairman and the Commission want to make is that with the money that is available now without any more money, all of the families residing in the area of controversy, the 300 plus or minus, will be able to have a replacement home.

It is to the best of the Relocation——

Mr. **Yates**. When?

Mr. **Craft** [continuing]. Commission's time schedule and Mr. Swimmer, on behalf of the BIA, that this could be accomplished some time with regard to the money that is available to the Relocation Commission. It is our understanding that money can be used during fiscal year 1986.

The money that is available for the $22 million, Mr. Swimmer I think in his statement says that he can relocate those who are willing to go to the new lands by 18 months.

So, you have two classes, Mr. Chairman. One of those living on the HPL. If all of those move off, there are no more people living in the disputed area.

What would be left would be all of those families who have volunteered under the law and complied with the law and have removed themselves from the area of controversy. Those families are some 1215.

Those families have already signed contracts with the Relocation Commission saying they have moved in compliance with the law, and they are waiting for their benefit, i.e., their house. The Relocation Commission and the BIA have no money today to satisfy the claim or the contract that those families have.

We do have money in the budget which is different from the previous years, to satisfy all of the families who reside in the area of controversy today to build them a home as soon as we possibly can with the given funds.

Mr. **Yates**. All right. I understand that explanation. Does the Commission have a plan that it can give to Mr. Swimmer right now, so that he can build the houses?

MEMORANDUM OF UNDERSTANDING

Mr. **Craft**. We are preparing right now, Mr. Chairman, a Memorandum of Understanding between the Commission and between the Bureau of Indian Affairs to iron out how we are going to proceed. You asked us in the appropriations process last year, indeed you passed a new law and asked us to give you a report by the 15th of February, which told you the answers as best we knew it by that time.

We are on target with that. We don't want to preempt that 15th of February date, because we are getting new facts now, but we have every estimation that we will be able to work very well with the BIA to satisfy that report and to tell you exactly what the time frame is within which both the houses for—that the Relocation Commission can build and those which the BIA is going to have to build.

Mr. **Yates**. Ms. Massetto.

Ms. **Massetto**. No, there isn't a plan.

Mr. **Yates**. There is not a plan?

Ms. **Massetto**. No, there is not.

Mr. **Yates**. How long will it take to prepare a plan? You don't have a plan then. Mr. Swimmer is going to have to wait until you give him a plan, correct?

Ms. **Massetto**. That is correct.

Mr. **Watkins**. Mr. Swimmer was at Flagstaff last week, and he is fully aware of everything we have done, and was presented, as far as the Commission has—Mr. Swimmer is aware of everything we have done up to date, Mr. Chairman, is that correct, Mr. Swimmer?

Mr. **Yates**. He is aware, but has he approved them? He shakes his head no.

Mr. **Swimmer**. No. I think Fred might be a little optimistic at any point. I can't say—I did look at a draft that they are proposing, which is a partially completed plan, and subject to some modifications, that the plan of action is doable.

We could certainly work with him.

Mr. **Yates**. It is doable, but not done. Is it anywhere near done?

Mr. Swimmer. It is going to require some negotiations, and we also are not——

Mr. Yates. Are you going to be able to finish it by the 15th?

Mr. Swimmer. That depends on the Commission. They will have my comments. Whether or not they can incorporate my comments into the plan, I don't know. It does set out a process for the plan.

Mr. Yates. Do you want to provide a copy of your comments to the committee?

Mr. Swimmer. Sure.

Mr. Yates. So, as of now, you are trying to negotiate an agreement, and you have no final plan as yet. Now, presumably when you and the Commission agree that will be the final plan?

BIA PROPOSAL PLAN

Mr. Swimmer. We are entitled to comment on the plan, and if we can't make agreement, then we would file—attempt to file a plan that would work out. The Commission has responsibility for developing the plan.

The law says that we are entitled to comment on that plan. If we can't agree—a lot of the plan is dependent on the pre-counseling that must be done with the Navajos that live on HPL, and that has not been done.

Until we go to those 208 families and find out what it is that we are going to do with them, they can't possibly put a plan together that is going to satisfy me. So this is where we are—not knowing which way to go. So far, we have not done the work with the potential relocatees to find out what the best plan is going to be.

We have plans that say we can build planned communities. We have plans to scatter people around the reservation. We have plans that would congregate grazing units. We have plans that would give them individual grazing units.

But if we were to choose any one of those plans and then simply go to those Navajo people and say, you get this one, it would be disastrous. We can't do that.

Mr. Yates. Why would it be disastrous?

Mr. Swimmer. Because the Indian person has to be a part of the process, or else we don't accomplish relocation. What we will have done is the same as has happened in the past, when people were moved to Flagstaff or Holbrook or Winslow, and they bought into a system that they couldn't afford, and now they are back on the street.

So it is incumbent upon us to try to do what is right with the 208 heads of household, if not the rest of them, and go in there and do some of this planning with the people, talking to them.

Some of this has gone on. There are some pretty good ideas that have been developed through conversations at various chapters around the reservation. I believe there were about 12 meetings held, some 30 or 40 families that have been talked to at the different meetings. They have some ideas, but it is very important that the engineering firm be aware of what the counseling produced and how best it is to resettle these people.

Some, in fact, most, will want some kind of grazing unit. Others might want a more urban type setting.

Mr. Yates. As I listened to the testimony, it suddenly occurs to me that you and Mr. Watkins and the Commission are discussing how you will proceed.

You are saying now that you cannot proceed until you talk to the Navajo people themselves.

Mr. Swimmer. Or someone does.

Mr. Yates. Right.

What happens to Mr. Zah and the Navajo community? Are they not entitled to have some input into this?

Mr. Swimmer. Absolutely, and I feel we should not go forward until Chairman Zah is a part of the process, and is working with us to see that what we do—I think we need to use Navajo people to do a lot of the interviewing, so that the people we talk to understand what this is all about.

They are not the people that apparently have a real in-depth understanding of everything that is going on about them in terms of this relocation. Some do, some don't, but we have to distinguish those.

I laid out in my testimony a proposed five-step plan that I think we simply need to follow, an outline of how we do that.

Mr. Yates. May we have your statement for the record? A copy of Mr. Swimmer's statement may be included in the record.

[The statement of Mr. Swimmer follows:]

STATEMENT OF ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES, COMMITTEE ON APPROPRIATIONS OF THE HOUSE OF REPRESENTATIVES.

FEBRUARY 4, 1986

Thank you for giving me the opportunity of appearing before the Committee to talk about Navajo-Hopi relocation efforts. The Bureau of Indian Affairs has not had an active role in the process of relocation from Hopi and Navajo partitioned land. I am sure you are familiar with the various legislative acts and court decisions regarding the issue so I will not spend time attempting to review the history of this situation.

The BIA has recently become directly involved in the Navajo-Hopi problem as a result of certain language in P.L. 99-190, the Continuing Resolution for FY 1986, whereby, the BIA was appropriated $22 million to build houses for Navajo relocatees on land acquired for that purpose by or on behalf of the Navajo Tribe. Also in P.L. 99-190 is a requirement for the Secretary of the Interior to comment on a plan to be submitted to Congress by February 15, 1986, by the Navajo-Hopi Indian Relocation Commission and to receive a list of Navajo relocatees presently residing on the Hopi Partitioned Land (HPL) to be furnished by the Commission by January 1, 1986.

As to the latter, we have been furnished a list of names and our area office in Phoenix has completed a field survey to determine which names represent Navajo people actually living on the the HPL. As the result of on-site visits, 239 Navajo households have been identified as still living on HPL. It is believed that 208 of these have signed a contract with the Commission for relocation and are, in fact, ready to relocate when the opportunity becomes available. Most of these people have had their sheep herds reduced below the subsistence level and have not been allowed to make home improvements since they became eligible for relocation in the mid-seventies. These are the people I will primarily address today because of the appropriation language limiting my authority to the new lands and the remaining Navajos actually residing on the HPL.

Last week, I met with the Commission to discuss its plans and progress relating to the new lands acquired for Navajo settlement. Some preliminary topographical work has been done by their engineer CH2M Hill. However, more communication is necessary between the Navajo families on the HPL and the Commission regarding grazing methods, location of homesites, the possibility for extended families to be relocated together, income potential for relocatees who will be unable to graze sheep, or potential utility charges for water, electricity, or gas that the relocatees may have to pay. It appears that the new land can carry about 170 families grazing up to 100 sheep per family. Even at that level, it will be difficult for one family to generate much income and they may still be living primarily on subsistence. Some of these grazing families might desire to have nearby other family members who are not eligible for grazing permits, and homesite leases can be provided for these people in the plan. However, there is probably little if any way to generate adequate income from the homesites so it is doubtful that very many people will choose to live on the new land if grazing is not available to them.

It is my opinion that a substantial amount of planning is necessary before we can begin expending the funds appropriated to us for house construction although the actual development can be staged so that completion of the relocation of Navajo families from the HPL could happen within 18 months.

The steps are as follows:

1. Intensive counseling with the residents of the HPL. This would include advising them of their rights to relocation benefits, explaining

opportunities on the new lands, reviewing and securing concurrence on grazing regulations, development of an appropriate house and home site plan and explaining utility options and costs involved.

2. Engineering and surveying to locate rights-of-way for roads and utilities, house locations, and to determine the kind of water and sewerage facilities to be provided.
3. Meet with relocatees to review house plans and prepare for construction of homes as access roads are made available.
4. Complete construction and move the families onto their grazing units.
5. Provide post move counseling.

It will be very important for the Bureau of Indian Affairs, the Indian Health Service, and the Commission to reach agreement on developing the new land. For example, the Commission has engineering and planning capabilities and substantial staff available to make home visits. While we have not been able to reach agreement yet, we expect to complete negotiations on a memorandum of understanding very soon. The process of planning, development and construction has begun through the efforts of the Commission. I believe we can develop a memorandum of agreement which will enable us to complete the relocation effort and improve the standard of living for those Navajos that have been involved in this process for the past 11 years.

This completes my prepared statement. I will be pleased to answer any questions the Committee may have.

BIA PROPOSAL

Mr. **Swimmer**. The first thing would be the counseling, and then we start the engineering.

Mr. **Yates**. I think that makes sense. In view of the history in the past with the deficiency in counseling that resulted in such calamitous living, I think it is important for the people who are relocated.

I think it is important that this proceed very carefully, and the committee is very much aware of Mr. Sidney's desire for getting the relocation accomplished, but I am sure that he agrees it ought to be accomplished in a way that is least traumatic for the people involved.

Mr. **Watkins**. Mr. Chairman, may I submit this is the relocatee and tribal participation on the comprehensive planning, and what we have done at the Commission, and the dates?

Mr. **Yates**. That may be submitted for the record.

[The information follows:]

II. RELOCATEE AND TRIBAL PARTICIPATION IN COMPREHENSIVE PLANNING

General Planning Effort

Questions have been raised about the extent to which the Commission has consulted with relocatees and with the Navajo Tribe in planning for the New Lands. The questions imply that the Commission has not involved the relocatees in the planning process. Contrary to this notion, there has been extensive relocatee and Tribal involvement in New Lands planning. This section describes the principal efforts, but certainly does not exhaust the subject.

In accordance with its mandate, the Commission has solicited comment from Tribal offices and from relocatees on all aspects of program operations, since the inception of the program in 1977. Comment has been both formal and informal. In order to obtain comment, the Commission has provided information through a wide variety of means, designed for diverse audiences. Comment has been incorporated into all program design and development, with emphasis concentrated most recently on New Lands planning.

In the early years of the program (1977-1982) comment on specific program issues was provided by formally organized groups of relocatees through chapter planning committees, the Navajo Relocation Planning Group, and committees formed of relocatees who had moved off reservation. As the purposes for which the groups were formed were responded to through various program initiatives, the groups were disbanded and comment was subsequently obtained through surveys and meetings.

Data Base Survey, 1982

In 1982 the Commission undertook a survey of a representative sample of relocatees in order to gather reliable demographic information about the Navajo people who were facing relocation. The primary purpose for conducting the study was to enable the Commission to use the information for planning purposes in the areas of land selection and economic development.

A questionnaire was developed to gather information about the relocatee and family covering the following topics: Economic level, employment, education, livestock/farm, social network and relocation site. Approximately 175 questionnaires were administered in person at the relocatee's home. The sample represented 20% of the then certified heads of household.

Survey content was used to design the client data base. Demographic information about individuals and their families is entered into the data base as they progress through the various stages of relocation assistance processing. Records were created for clients who had completed relocation prior to 1982 by means of case file review. Demographic information contained in the data base has been a primary source for preparation of the New Lands General Plan.

Group Move Planning Contribution

Group move participants have been actively involved in program design. A notable contribution has been the development of a set of culturally and environmentally appropriate house plans which incorporate the principles of energy efficiency, low maintenance cost, and homeowner participation in construction. The plans resulted from the work of the Hardrock Group Move Committee, who were elected from among the 110 relocatees participating in the move. During 1983-84 the Committee reviewed house construction methods, materials and designs in order to recommend to the Commission housing which would be appropriate for the Navajo people.

The Commission has proposed to BIA that the housing designs, subsequently adopted by the Commission for all on-reservation house construction, be used for the relocatees who move to the New Lands.

Public Information Outreach

In 1983 the Commission contracted for public information dissemination by Dine' Bikeya Bahane' (translation from Navajo: Talking about the People's Land), specialized consultants who engage in a wide variety of public information services which include: Publication of bimonthly newsletters to relocatees; regular TV and radio announcements; door-to-door visits to relocatee families; presentation at chapter meetings; group meetings; presentations to groups of relocatees at the counseling seminars and during New Lands tours.

Staff of Dine' Bikeya Bahane' (DBB) provide relocatees and the general public with information about the entire scope of Commission programs, and respond to a wide variety of questions. DBB communicates to Commission staff, in general terms, relocatee feelings and needs, completing the information loop.

Relocatee Comment Received Through Case Processing

Commission contact level personnel have provided a constant source of information about relocatee needs and concerns. As the contact staff are largely Native American, they have been sensitive to the needs of the clients. Their comments have been valuable in designing on-going program activities as well as New Lands development.

Relocatee and Tribal Participation in New Lands Planning

In addition to drawing heavily upon the knowledge acquired during eight years of program operation, New Lands Planning has incorporated relocatee and tribal comment through a series of structured activities.

1. Formulation of General Goals

During 1984 CH2M Hill planners and Commission staff held workshops, meetings and interviews with relocatees and tribal officials in order to define the broad goals to be addressed in the New Lands development plan. The principal issues identified revolved around family, grazing and jobs. The goals which were formulated, and are expressed in Planning for the New Lands are to:

a. Provide the maximum opportunity for extended families to move as units and to keep support groups intact.

b. Provide for the maximum number of relocatees to continue a traditional Navajo lifestyle.

c. Provide maximum opportunities for employment.

2. Meetings with Representative Extended Families November-December 1984

As soon as the General Plan was completed, Commission staff organized a series of twelve meetings with large extended families from each of the eleven former Joint Use Area chapters, and one meeting with District 6 evictees. The meetings were held at the families' camps on the HPL during November-December 1984. Each meeting was attended by twenty-five to thirty persons. The families were selected because the heads of household comprising the extended family unit represented a cross-section of the relocatee population in terms of socio-economic status, age, and relocation status (already relocated, pending relocation, ineligible, reluctant to move). In addition, the families were picked because each had a reputation for holding strong opinions and speaking out.

Using Navajo speakers, Commission staff showed video tapes and maps, and explained the concepts and alternatives available on the New Lands. The questions and comments obtained at the day-long meeting were recorded. The issues of principal concern are summarized in the Digest of Input Received During Meetings With

Relocatee Extended Families. The meetings with these representative Navajo families resulted in the identification of a series of policy questions. The Commission then organized a survey of the relocatee population in order to obtain response to the questions.

3. New Lands Survey, March-May 1985

A survey questionnaire was developed based upon the information obtained at the extended family meetings. The purpose for conducting the survey was to collect relocatees' views on all significant issues related to development of the New Lands, so that relocatee needs and desires could be responded to by provisions of the land use regulations and planning options, to the maximum possible extent within resource constraints. The survey was also intended to determine to what extent relocatees were aware of the lands and were considering them as a relocation site option.

The forty-two item questionnaire was translated into Navajo and administered to 111 families, who represented approximately ten percent of the population of certified eligible heads of household awaiting relocation.

Survey results are summarized in Summary Report, New Lands Survey and Policy Options and Synopsis of Comments. The results of the survey were considered by Commission staff in drafting the New Lands regulations, particularly the portions dealing with grazing, and by CH2M Hill in refining plans for settlement patterns on the New Lands.

4. Land Use Regulations Meetings, August-September 1985

In order to further obtain relocatee comment which could be incorporated into regulations as they were being drafted, four meetings were scheduled at chapter houses. Commission staff gave a detailed presentation in Navajo of proposed land development plans, including grazing opportunities and permitting priorities.

Each meeting attracted about 60-70 people whose comments were recorded and studied by staff in finalizing the proposed regulations.

The Bureau of Indian Affairs (ONPL), under an agreement with the Commission, performed range inventory and other surface resource planning on the Wallace Ranch. They are presently developing the same information on the other ranches acquired pursuant to P.L. 96-305 with an anticipated completion date of March 31, 1986.

5. Meetings With Actual Residents, October-November 1985

The Land Use Regulations meetings were followed by 15 meetings at chapter houses with relocatees actually living on the HPL. The meetings were scheduled pursuant to the Commission's desire to provide relocatees with the maximum opportunity to make informed decisions about their relocation site.

Letters were sent to approximately 350 heads of household currently living on the HPL. Information on the New Lands was presented by Navajo staff, using maps, overlays, and other audio visual materials. Relocatees who attended the meetings were invited to participate in New Lands tours.

6. Counseling Seminars, December 1985

A series of seminars for actual residents were held during December 1985. Approximately 110 relocatees attended the seminars. The Pre-Move Counseling staff presented information on the range of relocation options available, including New Lands. Persons who expressed an interest in the New Lands could sign up for the tours.

7. New Lands Tours, December, 1985-January 1986

Seven two-day bus tours of the New Lands have been conducted;

about 100 families have been represented on the tours. The tours take the families to areas of the acquired ranches where cluster sites and rural communities will be located, and include an evening presentation. In addition, families are taken to the nearby town of Sanders where they meet school personnel and receive information about the education system and other community services. The opportunity to see the town also acquaints them with local services and commercial outlets.

Upon completion of the tours the families complete a questionnaire asking about their interest in moving to the New Lands. About 95 percent of the families have stated that they are willing to move to the New Lands, and have stated the factors which are important to them in making a final decision on this option. The principal factors are:

- Opportunity to continue grazing, or to resume grazing which was relinquished following cancellation of grazing permits in 1973.
- Opportunity to have extended family members move with them.
- Development of an adequate infrastructure, including the extension of services to the New Lands.
- Opportunity for employment within reasonable commuting distance, either on or off the reservation.
- Continued exercise of choice among basic house plans and housing options, and the opportunity to be employed by the contractor during construction of the relocation house.

8. Comment Received From the Navajo Tribe

Extensive effort was made to obtain comment from offices of the Navajo Tribal Government on the major issues dealt with by the comprehensive plan. The comments received by CH2M Hill are recorded in the report Policy Options and Synopsis of Comments and will not be repeated here.

In summary, specific comment was received from:

Navajo Division of Health Improvement Services: Behavioral Health Department; Navajo Aging Services; Food and Nutrition Services Department.

Navajo Division of Resources: Fish and Game Department; Forest Management Department; Grazing Committee; Office of Navajo Land Development.

Navajo Division of Water Resources: Agriculture Department.

Navajo Tribal Chairman's Office: Navajo-Hopi Development Office.

Navajo Division of Social Welfare.

Navajo Division of Chapter Development.

Division of Public Safety.

Division of Economic Development.

Navajo Division of Labor.

The major policy issues on which the Tribe has commented include: General plan alternatives; identification of the population to be settled on the New Lands; grazing; homesites and housing; community planning approaches; agriculture; cultural needs; services and facilities; water; economic development.

Ms. **Massetto.** Mr. Chairman, might I review that? I haven't seen that.

Mr. **Yates.** Did you want to say something?

Ms. **Massetto.** I wanted to respond to it at some time.

Mr. **Yates.** I will hear Mr. Swimmer while you take a look at that.

COMMISSION PLANNING AND RELOCATEE INPUT

Mr. **Swimmer.** In visiting with the Commission, admittedly I listened to discussion for a day. I can't possibly have an in-depth knowledge of this. I reviewed the book. I didn't bring it, but I reviewed some of the work product done by the Commission. I think without question, there was a great deal of effort that has gone on in an attempt to develop some sensitivity to the relocatees.

I think we are facing a fairly typical situation that happens in Indian country. It is really difficult if you don't understand the base culture and have a fairly good working knowledge of what is going on with these people. No matter how many surveys or discussions you have, you are not going to get a really good understanding of what it is that they need.

In fact, there were several sessions that I mentioned, 12, I believe, that had an average of 30 people at each session, which would be about four families.

There were as many as 40 or 50 families that attended these counseling sessions. Now, I was told that originally, the Commission, because it was strictly voluntary, that essentially what they did is they set up an office in Flagstaff, and they invited Navajos in.

Navajos came in and they signed up. There was not initially a lot of investigation as to whether they even lived there, and as a consequence, a lot of people perhaps are even signed up for benefits that might not have been on the Hopi Partitioned Land.

But in reality, from what I could determine by the statements given by the Navajo individual in that testimony that was given—I think the Commission might even have copies of that they want to submit—there were concerns by the Navajo people about the cost of utilities, about whether they should move to new towns, whether they would be able to keep their grazing.

I don't know that any of the 208 families we are talking about today were involved in any of those sessions. These were counseling sessions or meetings held at the chapter houses around the HPL lands. So, I don't know the names of the people.

Mr. **Yates.** Does the Commission know whether they were any of the 208 families who are supposed to be remaining on the Hopi land, at the counseling sessions?

Ms. **Massetto.** Yes, they were.

Mr. **Yates.** All of them?

Ms. **Massetto.** There was a total of 200 individuals—some of those individuals were extended family members, not currently domiciled on reservation.

Mr. **Yates.** Do they qualify for Mr. Swimmer's statement then?

Ms. **Massetto.** Well, yes, they will, given Mr. Swimmer has given some directions to the Commission about prioritizing grazing permits which means that will prioritize moving on to the new lands, so yes, some of those will be included in that.

RELOCATEE AND TRIBAL INPUT

Mr. **Swimmer**. One of the concerns I had in reading the testimony was that it appeared that a number of the people were in fact literate. They wrote statements in English to the Commission.

From talking to Chairman Zah, I understand a lot of the 208 families are very traditional, many non-English speaking.

They speak Navajo, and they are grazers. There is a good chance that if we don't go house to house or hold family meetings in the units where they are living, and try to focus on those people to determine how best it would be for their new lifestyle on the new land, that we will make a mistake, as has been made in the past. We will get people in a situation which is intolerable, and they will wind up homeless and without the grazing. So that is why I say we must do some of the counseling.

Ms. **Massetto**. I am sorry. Is Mr. Swimmer talking about the bus trips, the yellow bus trips out to the reservations?

Mr. **Swimmer**. No. I am talking about 1985.

Ms. **Massetto**. Yes.

Mr. **Yates**. Now, the question is, you have a plan here, this pink plan that you have distributed to Mr. Atkinson, and now to Ms. Massetto. Were the Navajo people consulted in connection with that plan?

Mr. **McAlister**. Mr. Chairman, that is not a plan. That is a summary of the activity over the last five or six years in terms of relocatee and tribal department input into the planning process.

Mr. **Yates**. This has nothing to do with the plan?

Mr. **McAlister**. It only has to do with the input by relocatees and tribal commissions in connection with developing the plan.

Mr. **Yates**. How many Navajos were consulted in connection with the statement of yours?

Mr. **McAlister**. Well, Mr. Chairman, I believe you would probably have to go over a summary of the statement to answer that question—there are several different formal meetings that were held.

We reference the fact that constant contact between our counseling staff during the certification process also completes an information loop to these people. Our people were not only dispensing information as they contacted relocatees, but returning that information to staff in terms of what desires and feelings the relocatees had.

Mr. **Yates**. Who was working on the plan?

Mr. **Watkins**. CH2M Hill and the staff.

Mr. **Zah**. Mr. Chairman, if I may interrupt, we would like to see the pink plan.

Mr. **Yates**. Let me find out first what the purpose of the pink plan is.

Mr. **Watkins**. He just explained it, Mr. Chairman. This is just a summary of what we have done the last four or five years, as far as relocatee and tribal participation is concerned. That is what this is.

Mr. **Swimmer**. I think it indicates a problem of having essentially the non-Indian community involved in this kind of thing. There were some Indian people involved in it, but if you go through, there has been a lot of effort at the media, at the newspapers, and then there have been the meetings that I discussed that were held with 40 or 50 families.

That gives an individual a good, broad overview maybe of what you would like to start on. We have got to go to the families. We have to talk to them, and we have to find out what it is.

Mr. **Yates**. Are you saying they haven't gone to the families?

Mr. **Swimmer**. No. Not from the information I have seen so far.

Mr. **Yates**. They have not.

Mr. **Swimmer**. Some yes, but I don't know that they have done it——

RELOCATEE AND TRIBAL INPUT

Mr. **Yates**. Ms. Massetto.

Ms. **Massetto**. Having quickly read the pink plan, which is not a plan, I would like to address several points. Page 1, the issue of demographics. The issue of demographics is something that I have been concerned about from the very beginning when I came on this Commission.

The reference to the Commission taking a sample of the relocatees to get demographic information has been a sore point with me. I don't believe you can sample relocatees. I think you have to know individual family needs, and it has to be done on a one-to-one basis.

Our consultant CH2M agreed with me on that point, but for some policy reason, it was not carried out. I want the record to show I share Mr. Swimmer's viewpoint that you cannot plan this relocation without knowing what kind of people you are dealing with, that you cannot put people in houses, that you have to build the houses around the people.

It is essential for this program to be successful if it is going to be successful. Page 3. Meeting with representatives of extended families, 1984, this is the study of digest input and the record doesn't have my copy.

It is marked up. This perhaps was the best thing that we did at the Commission.

Mr. **Yates**. This is the digest of input received during meetings with relocatees and other families prepared by CH2M Hill, Flagstaff, Arizona, dated January 4th, 1985.

Ms. **Massetto**. CH2M planners specifically, because that is an important distinction at this point. There were a number of native speakers that went along with them. It was very beneficial.

The exchange of meetings were held all day long, some eight to 12 hours. Dialogue was in Navajo most of the occasions, and it was translated. For some reason, this was stopped, and I have never understood it.

Mr. **Yates**. What was stopped?

Ms. **Massetto**. The dialogue we started creating with the extended families. We went to one hearing and then we were supposed to continue in the springtime, and there was never again any more meetings.

In fact, it became a sore point with the planners of CH2M Hill why this was not being continued, because they did not believe they could put together an adequate plan without this kind of input. This is real input.

Mr. YATES. Why was it stopped?

Ms. MASSETTO. You will have to ask the people that made the policy direction about it, because it was not me.

Mr. YATES. Did you stop it, Mr. Watkins?

Mr. WATKINS. No, sir. Mr. McAlister is in charge of planning. I would like you to speak to him. Can we speak to this, because we are getting bombarded from both sides here, and he is in charge of planning, and he will respond to what plans have been made.

Mr. YATES. All right.

Ms. Massetto, you finish, and then——

NEW LAND TOURS

Ms. MASSETTO. Then the new land—people have been going out in yellow buses where they have been viewing the new land. That is okay. The problem with it is that they are then taken to small groups, and asked questions in a very non-Navajo way.

They are asked questions, do you like the land, do you want to move here? That is not the process by which Navajos make decisions, and demographics, certain demographics have been collected on that basis, and I am a little leery of it.

But it is helpful to let the people go out and see the lands. Now, with respect to the last point where you see all the different people that were involved in the planning process, in October of this year in Chambers, Arizona, we held a meeting that did, in fact, have most of these people present, including Claudeen Bates Arthur, myself, and other members of the staff at the Commission.

We started reviewing the plan. For some reason, again, we stopped having those meetings. I have no idea why those meetings stopped, but they are no longer in existence. So that, yes, there looks like a lot of contact has been made.

I am not quite sure how meaningful it has been, and——

Mr. YATES. What you are saying is the meaningful contacts were ended and stopped.

Ms. MASSETTO. Correct.

Mr. YATES. Mr. McAlister.

Mr. MCALISTER. Yes, Mr. Chairman?

Mr. YATES. Mr. McAlister, why don't you come up here to Mr. Boland's seat and testify for the record.

Ms. MASSETTO. Mr. Chairman, this is demographics on people actually domiciled. That was the printout I got two weeks ago.

PLANNING PROCESS AND EVALUATION

Mr. MCALISTER. Thank you, Mr. Chairman.

I don't know that I would characterize the input as having been stopped at a point in time this past summer. I will, however, agree with Commissioner Massetto that because of the time press, the approaching deadline, that there was a transition from the more socio-economic kinds of planning into hard physical planning with the Engineering Division of CH2M Hill.

Actually, the first major document that the planning discipline, as Commissioner Massetto differentiates them from the engineers, produced was this document in December of 1984.

It was basically this document that was reviewed in various forums by CH2M Hill's staff, as well as two or three of the folks on our staff who are in the planning discipline or at least coordinating with the contractor.

The purpose and the task order as it was issued was to review this document and all of the alternatives, and to develop them from the input from tribal departments, as well as relocatees, et al, a document of policy options and synopsis of comments of all of the parties.

That document has been produced. In this document, the very first item that CH2M Hill, and this was produced by the planning folks, addresses what alternative to developing the new lands in terms of the kinds of living situations is most advisable.

They started with three—would somebody hand me one of the tabloid newspapers? They came up with three originally in this tabloid that you see, and by the time the input had been received around the reservation, both by the relocatees and tribal departments, they had broken that down into seven branches.

Now, this document was the first that was circulated. It was in this format hopefully to reach as many people as possible and address the three different general plans that CH2M Hill had envisioned originally.

That did evolve from this document into the seven. The plan they chose as most desirable was a mixed use.

Mr. YATES. Who is "they?"

Mr. MCALISTER. The planners as a result of all the input and of their planning expertise. Now, the plan, which we have not committed to, but are moving forward with at this point, I agree with Commissioner Massetto, is not identical to what they propose.

What occurred was their mixed usage was to be cluster sites, where grazing permitees would live with a number of extended family members who did not qualify for a grazing permit, but who wanted to live with them on the range unit that they received. This is similar to the camp settings that the relocatees currently live in on the HPL.

Now, we knew from the outset the land would not support as many grazing permits as we have relocatees, however, there was a very strong desire for the grazing. CH2M Hill proposed community settings were going to be quite small, I believe, no more than 30 to 50 in a semi-rural community setting.

We contracted with the BIA's Flagstaff office, or entered into a memorandum of agreement, for them to develop the actual range management plans.

Their input, as well as others, IHS in terms of what would be feasible to bring utilities, et cetera, one of the first things that BIA indicated to us was to place a lot of smaller rural communities around this land, would not be the best usage in terms of grazing, that there was a real cost in terms of every little community that we put out there other than a grazing cluster would take access roads, the areas themselves, and would detract from the grazing, maximum grazing capability.

So, at this point in time, what has occurred is the clusters are going to be maximized, and we anticipate there will be enough grazing permits if we include the Bar N and Chambers——

PLANNING PROCESS AND RELOCATE INPUT

Mr. **YATES**. May I interrupt? Do I understand from what you testified that your plans are being developed without receiving input from the people to be relocated?

Mr. **McALISTER**. No, sir. As I indicated, this document——

Mr. **YATES**. Ms. Massetto doesn't agree with you.

Ms. **MASSETTO**. That is correct. That document that he is pointing to, the synopsis of the policy issue, was based primarily on that digest of information from relocatees' comments, the 1984 document I handed to you.

The planners were very concerned that they had to come up with a policy analysis based on one set of meetings with the families, that they didn't think that was sufficient enough, however, they proceeded forward with their contract, because they did not want to be in breach of their contract, and produce that document which was produced to us in July.

The Commission has taken no stand on that document. We have never had a Commission meeting to discuss those policy issues, which I believe requires a Commission review and a Commission vote with consultation with the Navajo Tribe.

We sit here today, we talk about that document, but there has been no official Commission action on that document.

Mr. **YATES**. This is policy option and synopsis and comments.

Ms. **MASSETTO**. Would you respond to that?

Mr. **McALISTER**. The point in time we were at as far as making a decision on a community was pushed back, as you know, because when we met with IHS in, I believe, September, and Mr. Hartz is here and nodding, as people from his staff were present, indicated that before they would commit or put their stamp of approval on any community site general water studies would not be acceptable, and a well would actually have to be sunk.

So, there was a tentative approval for the rural community area near Sanders for several reasons. But that was the area that was decided to prove out the water, and the Commissioners felt a final decision on where the community would be located should not be forthcoming until we could simultaneously state what the flow rate of that well was, what kind of population it would support.

The Commissioners did, however, formally agree last Friday I believe, and Ms. Massetto was present, in Phoenix to have CH2M Hill proceed with that site with the understanding it would never exceed more than 200 homes, five-acre home sites.

Ms. **MASSETTO**. Let me address that, Mr. Chairman. The rural community, or as I like to call it, the Subdivision of I-40 is not being portrayed to this committee quite accurately.

The fact is CH2M Hill planners, based on information gathered at that meeting and some other meetings, that meeting being the 84 Digest meeting, 84 Extended Family meetings—suggested to the Commission that very, very small rural communities, as Mr. McAlister suggests, could be constructed based on one factor.

Those people had to have some means to take care of themselves. We could not build rural communities with people that did not have jobs.

Otherwise, you are going to create economic ghettos out there, and that has been a real sore point with myself and the other two Commissioners.

CH2M Hill did not suggest there be little tiny rural communities everywhere. They suggested maybe one rural community based on a population that was self-supporting, that were younger, that had extended members that were living in range units, grazing out on the family lands.

Mr. **Swimmer**. Mr. Chairman, I would like to add something here.

Mr. **Yates**. Mr. Swimmer.

Mr. **Swimmer**. There is also a document that the Commission prepared which was very informative, and it has the economic analysis of the Interstate 40 corridor. I think what the Commissioner was saying has some merit.

It must not be done in a vacuum; you must not simply put a community there and not provide for at least economic well-being. In fact, within about 20 miles, this economic analysis indicated in the town of Holbrook, there is on the planning boards an electrical generating plant, I believe, and also the availability of some vocational or community college.

I see it again as the planning that is being done somewhat in a vacuum in order to find a site for a person to move, but we are not considering the other sociological issues there. In fact, a planned community similar to what she is talking about, a subdivision of five-acre tracts with 100 people, if you would work with the families and develop the kinds of training that would be needed to fill the jobs, that might be available, or at least projected in the Commission's report, that wouldn't be a bad idea. There are a number of people that, in fact, don't particularly want grazing leases, large grazing leases, but would probably prefer a five-acre tract of land and certainly some of the younger ones. I know in talking with the chairman, there are some that would not oppose that, but we would need to do the extra work.

And certainly, I guess in a way what you said earlier, that is not the Commission's job. That becomes my job, the Department of Labor's job, the Department of Commerce, and we have to work to make these things happen.

We can't simply say, well, let's do the community there and ignore everything else around it. So, I think the Commission has done various studies over the years that indicate how some of these problems could be solved if we could bring them all together, and work on a common solution.

Mr. **Yates**. But, Mr. Swimmer, you said that you shouldn't go forward without counseling and discussing what ought to be done with the 208 families.

Mr. **Swimmer**. Or the 1251, absolutely. Because we don't know. We might move a grazing family into Sanders.

Mr. **Yates**. Is that your function, or the Commission's functions?

Mr. **Swimmer**. At this time, it would be the Commission's function.

Mr. **Yates**. But the Commission hasn't done it, has it? The Commission's history is that it has not done that. Isn't that true?

Mr. **Swimmer**. I can't speak to that except for what I have seen.

Ms. **Massetto**. Is that true? That is my position, yes.

Mr. **Yates**. Is that your position?

Mr. **Watkins**. No, it is not my position. Mr. Tessler, would you stand up and speak to that?

Mr. **Tessler**. One statement, Mr. Chairman.

I think it is important to note the ranches acquired under the 1930 Amendments Act, the acquisition was just completed. The BLM did a wonderful job of acquiring these ranches, and as of just last month, they finished the acquisition of the 215,000 acres in Arizona.

That land has just become available in its entirety. Also, just last month, the appropriations provided for the development of this new land. We have also to prepare this report, which is due next week, which I believe is going to tie all this together.

And what Mr. Swimmer says needs to be done is correct. We need to counsel with each of the families on the HPL to find out where they want to go on this new land, and that is precisely what we propose.

We cannot put people on the new land without intensive counseling and the report will state that next week.

Mr. **Yates**. I think that is true. But you haven't done that in the past have you?

Mr. **Tessler**. We have with varying degrees of success.

Mr. **Yates**. With varying degrees of counseling or varying degrees of success?

Mr. **Tessler**. Of success in the counseling.

ECONOMIC DEVELOPMENT

Mr. **Yates**. Ms. Massetto.

Ms. **Massetto**. Those comments are irrelevant. We don't need new lands to counsel and to plan. In fact, we have spent now, as you said this morning, 11 years doing what? The fact of the matter is we should have been collecting demographics, we should have been counseling people, we should have been finding out what they wanted, so when we acquired the new lands, we could have those things put together and fitting on the lands instead of getting the people and fitting them on the land.

Mr. **Yates**. Mr. Sidney.

Mr. **Sidney**. I wanted to ask for time for the chief.

Mr. **Yates**. I will make time, Mr. Sidney.

Mr. **Sidney**. Thank you.

Mr. **Yates**. This position of the chairman now, this chairman, is that I think BIA ought to be doing the counseling work. Your agency is trained for that, is it not?

Mr. **Swimmer**. We have some people that are, Mr. Chairman. We don't have the resources. The Commission has the resources now to do that.

They have the counseling staff to do it, and we are back into the question about who is going to do what, and where do we get the resources.

Mr. **Yates**. All of a sudden, I am wondering what the effect of Gramm-Rudman will be on all this.

Mr. **Swimmer**. Not good. Although I believe that we are well within the numbers on—in fact, I imagine I won't have a problem with it, but it seems to be difficult.

Mr. **Yates**. Do you know whether or not you are going to be subjected to any rescissions or deferrals other than the 4.3 percent cut?

Mr. **Swimmer**. I am not aware of any. As far as I know, none are planned.

Mr. **Yates**. I know, for example, Indian Health Services is going to be the subject of a rescission in the amount of $74 million. I wondered whether or not that bears on this. I would think it probably would.

I know in this document that Mr. McAlister referred to, policy options and synopsis of comments, there are rough drafts, I am told, that were prepared by Navajo people who thought of the kind of community they wanted to create.

Has this been taken into consideration in your planning by the engineers?

Mr. **Watkins**. Mike.

Mr. **McAlister**. Yes, Mr. Chairman, it was taken into consideration in the document you have in your hand.

Mr. **Yates**. Was it agreed to?

Mr. **McAlister**. No. There is no individual plan that you see represented there, a final plan.

Mr. **Yates**. So you don't know whether that has been done. Mr. Sidney, did you want to introduce your elder?

COMMENTS FROM HOPI ELDER

Mr. **Sidney**. Mr. Leslie. He would like to say a few words, and I will try to interpret for him.

Mr. **Yates**. All right.

[A statement was given in an Indian language.]

Mr. **Sidney**. Thank you, Mr. Chairman.

What Mr. Leslie has stated, "I am here today from the Hopi land, and I am here because I stand behind our elected chairman," talking about myself.

"My name is Eban Leslie, Eban Edward Leslie is my name. I am the Kik-mongwui, the Chief of the Hopi village of First Mesa. You are here today talking about my land. We are very tired of how long you have been talking about my land.

My people have grown. I have come here myself because we are very tired and that because of my people are growing, we need the land for ourselves.

We call on you to find room for the Navajo people that I am here based on my teachings, and I want to tell you that I am here, that my teachings and my authority is nothing but writing on a piece of paper, and I know that is what you have been talking about all morning, is everything on paper, but my religion is nothing on paper. It is all from my elders.

I can tell you today that between the Navajo and the Hopi that the Navajo have been defeated religiously, that we have had a religious agreement in the past, and that this is Hopi land you are talking about.

This is enough. I want to take control of my land today myself. We have received this land from the Creator. And I want to say lastly to you that it appears to me that all of you are not working together, that you must work together, and that I want my land today."

"In just about one more minute," he asked, Mr. Chairman, he wants to say something in Navajo to Mr. Zah.

[A statement was given in an Indian language.]

Mr. SIDNEY. He asked Mr. Zah to bring his elders with him and he will be waiting for them on Hopi land, and let's talk about this.

Mr. YATES. What does he want to talk about?

Mr. SIDNEY. He wants to talk about the religious settlement that we have talked about.

Mr. YATES. The religious settlement?

Mr. SIDNEY. The land belongs to the Hopi, and he made that request in Navajo language, that he speaks himself.

Mr. YATES. Would you like to reply in Navajo, Mr. Zah?

Mr. ZAH. Sure, Mr. Chairman, and members of the committee——

Mr. YATES. We better let you address the committee. The time is 20 minutes of 12.

NAVAJO TRIBAL CHAIRMAN'S STATEMENT

Mr. ZAH. Mr. Chairman and Members of the committee, and Commission members, Mr. Swimmer, the Assistant Secretary: I just wanted to, for the record, introduce a statement coming from the Navajo Nation at today's hearing to outline some of the concerns that we have as a nation , as the Relocation Commission is dealing with our people. And if you don't mind, I would like for you to enter that statement for the record.

Mr. YATES. That statement will be entered in the record.

Mr. ZAH. What we are talking about, you and the people know, and the Commission knows, and everybody in this room knows, that ever since 1974 the Navajo Nation has opposed relocation as a remedy to solve the issue that existed between the Navajo and the Hopi Nations. And Congress, for all good intentions perhaps, in 1974 thought that the whole relocation was going to cost around $40 million. And today, we have increased that number, and now we are talking about almost half a billion dollars that it is going to cost the United States Government to relocate our people.

Then, in light of what the Act has stated and what it tries to say, we are facing a Federal reduction. You have Gramm-Rudman to look at. Our basic belief is that relocation is not the answer. It is not working. You have seen here even the Commission members disagree on an approach to relocation. The Assistant Secretary perhaps disagrees with the planning that the Commission wants to do. And, to me, the Commission has done the terrible job of relocating people to a degree where they end up hurting many people that have relocated off the reservation.

To me, what is happening is that a Relocation Commission is planning not with people, but they are planning certain things, and after they plan things then they are going out looking for people to see which of the families may fit into their plan. To me, that is not planning. It is planning on a piece of paper, but you don't have the people involved.

For all these years, we have been wanting to be consulted as people, as families facing relocation. I think it is only proper that the Commission pay attention to what we have to say, because after all, what they are saying and what they are planning will affect the Navajo people, the Navajo Tribe, and the Navajo Nation.

So, I am happy that you are taking a personal interest as to the problems that the relocation has faced, people who have been relocated and people who are subject to relocation. And what I would like to do is point out some things that I am a little disturbed about.

I think it has been stated before the Commission that there is a moratorium on the part of the Navajo Nation not to allow people who are facing relocation to move on to Navajo land. We have records to show where, during the last several years, the Navajo Nation has given 656 home site leases to those relocatees who want to come on to existing Navajo land. Out of that 656, 365 were used by the Relocation Commission to settle the Navajo on the current existing Navajo reservation, which leaves us about 300 unused home site leases where we have told the Commission and the relocatees that they can build their homes on to existing Navajo land.

We still believe that this problem we are talking about is a problem that was created for us, created by the Federal Government, and now we are having to deal with who is going to pay for the costs, where will people be relocated.

I wanted to inform the Commission that it was not until six months ago we finally got the land we were supposed to be relocated to. People have come around and they have often asked us why aren't the Navajo people relocating. A simple fact is that we have no land to relocate to, and I think that has to be taken into consideration.

Mr. **Yates**. Are you talking about the ranches now?

Mr. **Zah**. The ranches.

Somebody stated it wasn't until six or eight months ago that we finally got all the land we were entitled to.

So, our position from the Navajo Nation is the same ever since 1974. Relocation is a terrible, horrible thing to do to people, and we are against it. I don't think it is the right thing to do to any human being, and that is why we are fighting it. And I think the committee and Congress and the people are beginning to realize what is happening, and that perhaps it is morally wrong to do what we are doing now, and we are throwing money at those kinds of activities in relocating people.

I just wanted to say that for the record.

We also have disagreements with some of the figures that have been thrown around by the Commission, by the BIA. And what I would like to do is have the Attorney General explain some of those figures that have been thrown out for this discussion here. So I would like to defer to Claudeen Bates Arthur.

[The statement of Mr. Zah follows:]

THE NAVAJO NATION
WINDOW ROCK NAVAJO NATION (ARIZONA) 86515

PETERSON ZAH
CHAIRMAN, NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

Statement of

Peterson Zah
Chairman, Navajo Tribal Council

Before The
Subcommittee on Interior and Related Agencies
Committee on Appropriations
House of Representatives

February 4, 1986

The Navajo Nation has consistently said that forced relocation of any native people is a serious mistake. The forced relocation of Navajo and Hopi people from portions of the 1882 Executive Order Reservation is particularly harsh and unfair because it attempts to address a problem created in the first instance by the Federal government, yet the burden of the law punishes innocent Navajo people.

Ancestors of today's Navajo and Hopi people who settled the disputed land over the course of more than a hundred years were completely lawful in doing so, and co-existed there for generation after generation. Then, in 1974, the rules were turned inside out. Land that had been set aside for joint and undivided use of both Tribes was divided, and innocent occupants who found themselves on the wrong side of a new boundary became trespassers overnight.

The forced relocation upon which the Congress embarked in 1974 is unnecessary; less expensive and more humane solutions were presented that would have avoided or minimized relocation.

Ultimately, the inhumanity of forced relocation that will condemn it to an infamous place in history. The unvarnished truth is that relocation destroys families and lives, in ways that were predicted prior to 1974 and which the ensuing eleven years have proved to be sadly true. The entire policy of forced relocation is misguided and therefore should be discontinued or at least minimized.

However, the Navajo Nation recognizes at this time that a major change in policy may be beyond the scope of this Committee's present inquiry. Our further analysis and remarks are addressed to the uneven and neglectful way the relocation policy has been implemented. Simply stated, so long as the Congress insists upon following the relocation path, the law must be followed to the letter, or it should not be pursued at all. The law requires that the relocation must:

> (a) be "developed to the maximum extent feasible in consultation with the persons involved in such relocation"; and
>
> (b) "take into account the adverse social, economic, cultural, and other impacts of relocation... and ... avoid or minimize, to the extent possible, such impacts"; and
>
> (c) "assure that housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for such households shall be available at their relocation sites".

25 U.S.C. 640d-12(c)(1),(2) and (4). The federal government has utterly failed to meet these requirements of the law.

The Present Status of Relocation

As a result of Public Law 93-531, Navajos residing on the Hopi Partitioned Lands ("HPL") either have relocated or are awaiting relocation. Relocation may occur off-reservation, principally to border communities, on-reservation to homesite leases made available by the

Navajo Nation, or to the New Lands, selected by the Navajo Nation in Arizona and New Mexico.

As of the end of December, 1985, 874 Navajo families (3,705 people) had relocated. Of that total, 512 families (2,163 people) had relocated off-reservation, mostly to border communities such as Flagstaff (216 families) and Winslow (85 families). Three hundred and sixty-two families (1,542 people) have relocated on-reservation, the majority to the areas of Hardrock (49 families), Tuba City (43 families), White Cone (46 families), and Pinon (28 families).

According to the Navajo and Hopi Indian Relocation Commission (the "Relocation Commission"), a total of 3,909 Navajo families have applied for benefits as relocatees from the HPL. A total of 2,376 households have been certified eligible for relocation, 1,518 households have been denied, and 15 households are pending certification.

Navajo Families on the HPL Awaiting Relocation

According to the Relocation Commission's latest figures (December, 1985), approximately 500 Navajo families (more than 2,000 individuals) remain on HPL awaiting relocation. This group includes families who are certified for benefits and are awaiting action by the Commission, some families whose relocation is in process, families who live on the land but have never applied for benefits and families who are on the land but whose presence has been questioned by the Hopi Tribe (the "Unverified Certified Continuously Domiciled list"). The Navajo Nation believes that the Relocation Commission's statistics undercount the affected Navajos, but even the Commission's own numbers illustrate the shocking fact that thousands of individuals await relocation twelve long years after the law was passed. Hundreds of others are appealing the Relocation Commission's denial of relocation benefits.

Implementation of the 1974 law, including mandated livestock reductions, caused relocatees income from self employment to plumet while they awaited relocation, and further caused more relocatees to rely on welfare as their primary source of income.

Under the 1974 law, additions or repairs to Navajo homes on HPL can only be undertaken with the approval of the Hopi Tribe, but the Hopi Tribe has consistently refused to grant such approval. As a result, many families have lived for years with 12 to 15 people in one-room dilapidated dwellings while they waited for the Relocation Commission to effect their relocation. A sample taken between June 1981 and September 1985 showed that approximately 60 Navajo families had asked the Hopi Tribe for approval for normal housing maintenance work such as roof repairs, weatherization, or window repairs, but that all such requests had been denied.

The building freeze also precluded the construction of homes for young adults as they married and started families of their own, forcing them to live with their parents in the same dwelling that accommodated them in 1974, while their relocation applications are processed. By failing to recognize this younger generation, the Relocation Commission has underestimated the magnitude of the relocation task and will likely perpetuate these overcrowded conditions at the relocation sites.

Many of the families awaiting relocation from HPL cling steadfastly to the most traditional Navajo customs, and subsist in the classic Navajo manner by raising livestock and growing small gardens of corn and melons. Contrary to Relocation Commission assumptions, the average family size on HPL is nine members, not 4.2 members. The average age of the head of household is 61 years, and 42% of those heads of household have no formal education at all, while 22% have only an elementary education. The traditional Navajos are least able to adjust to a new and completely different environment.

For any relocation effort to meet the requirements of the law, "such plan [must] be developed to the maximum extent feasible in consultation with the persons involved in such relocation." Thus, each family needs to be consulted, counseled, and made fully a part of any relocation plan. To date, except for CH2M Hill's initial inquiries, the extent of consultation by the Commission has been minimal.

Families That Have Moved Off HPL But Are Still Awaiting Relocation

The second group of individuals and families that need attention are those Navajos that have complied with the Act and have moved off HPL, but have not yet received relocation benefits. These families are currently living temporarily in other on- and off-reservation communities.

Tuba City, Arizona is a microcosm of the problems that face the individuals, families and the Navajo Nation in both the 1882 and 1934 land disputes.

As mentioned above, a construction and improvement freeze was imposed on the Former Joint Use Area of the 1882 Reservation ("FJUA") by court order in 1972. For approximately 10 years preceeding that order, a de facto freeze was imposed by the Department of Interior due to the land dispute. A similar construction and improvement freeze was imposed on the 1934 Reservation in 1966 by the Commissioner of Indian Affairs, later codified in the 1980 amendments to the Relocation Act (P.L. 96-305). Tuba City lies in the middle of that "freeze" area, and the freeze forbids new construction except in a 3,000 acre area around

Tuba City. As a result, relocatees who move to the western Reservation maylive only in the freeze-free area around Tuba City, where they are being packed into any available structure. Homesites that were intended for a single family often end up with several temporary houses or trailers overcrowded with relocatees. This situation worsened as the wait for relocation benefits lengthens. Tuba City simply cannot absorb the influx of all people awaiting relocation.

Tuba City's population density, increased by both the influx of relocatees and the prohibition on development and new construction outside the immediate administrative area, magnify the social problems which arise when traditional Navajos, accustomed to living in a dispersed settlement pattern, live in a confined urban setting.

Incomplete Relocations

Another area of grave concern to the Navajo Nation is the lack of planning to mitigate adverse impacts for on-reservation relocations. The Relocation Commission hoped that its "group move" process would enable applications to be processed quickly and efficiently and permit family members to move together.

However, the group move does not appear to be working. At the request of the Relocation Commission, CH2M

Hill completed a study in August 1985 of the Hardrock community, which is heavily impacted by relocation. That study showed that of the group move families, some of whom moved as early as 1979, 67% were without running water and 62% had no sewer system, while the nearest water source was an average of 5 miles from the new homes.

Initial counselling services, which explained the general "relocation plan," were provided to most of the families, but only seven percent of the relocatees received all the promised counselling and training prior to relocation. Relocatees typically did not receive mental health counselling, social, and school services counselling or home maintenance information.

The traditional Navajo livestock-based economy was the norm in Hardrock, but the one-acre group move and limited grazing land do not allow the traditional subsistence economy to continue. The CH2M Hill study in August 1985 concluded that the Relocation Commission had not adequately addressed these economic problems.

Social and psychological problems relating to relocation are well documented. (Topper 1979), (Joe 1985). In a study of Hardrock potential relocatees, 91% of those interviewed by Joe attributed health problems to relocation. Topper states that relocatees utilize the mental health facilities of the Indian Health Service eight times as much as non-relocatees.

To date, 49 families have been moved under the Hardrock group move plan. The Relocation Commission is continuing with its plan to relocate a total of 150 families to the Hardrock area, in spite of the adverse findings of the CH2M Hill report and over the objections of the relocatees and the Navajo Nation.

Conclusion

Forced relocation is an inappropriate policy that has no place in peacetime America. In the interest of simple human decency, not to mention fiscal responsibility, the Congress and the two Tribes should be unified in an effort to end, or at least minimize, further relocations.

A comprehensive settlement of all outstanding Navajo-Hopi land dispute issues is possible. Toward that end, the Navajos are prepared to exchange lands with the Hopi that have far more acreage and higher value than the land we would keep. We are prepared to offer additional acreage in the 1934 Area and provide a Hopi corridor to Moencopi. We are prepared to offer the Hopis new coal royalties from the Peabody lease. There is plenty on the table that would benefit both tribes. A comprehensive settlement can and must be found.

Thank you.

WILLINGNESS OF RELOCATEES TO COMPLY

Mr. **Regula**. Mr. Chairman.

Mr. **Yates**. Mr. Regula.

Mr. **Regula**. Mr. Chairman, a simple question here.

Given the fact that we now have these new lands available, are the Navajos ready to relocate?

Mr. **Zah**. My answer to that is that we have asked for infrastructure development, not only during the last hearing; we have always asked for infrastructure development. We need hospitals on the new land. Where will the people go if they get sick?

Mr. **Regula**. Are there hospitals on the existing Hopi land that will be vacated?

Mr. **Zah**. No.

Mr. **Regula**. You are asking for additional on the new lands, then; right?

Mr. **Zah**. Right. The new land is 100 miles away.

Mr. **Regula**. From the hospital that serves the present reservation?

Mr. **Zah**. From the nearest hospital. The new lands is adjacent to the reservation. If people are going to be relocated to that new land, they need water to drink; they need to have——

Mr. **Regula**. Is there water on existing lands that they would be leaving?

Mr. **Zah**. Sure, there is water on existing land, nearby water.

Mr. **Regula**. Are you asking for comparable facilities, or better?

Mr. **Zah**. Under the best of circumstances, we are asking for something that is better than where we are now. That is in compliance with the law.

Mr. **Regula**. I understand.

Mr. **Zah**. That is what the Act said.

Mr. **Regula**. I just want to understand clearly. I understand there are clinics available—that could be available—in less than 100 miles. You are talking about the hospital, but not the clinics; correct?

Mr. **Zah**. Yes.

Mr. **Regula**. Have you had input to the Commission and/or the BIA as to what you see as the minimum requirements that should be available on the new lands in order to get the move consummated?

Mr. **Zah**. Well, we have been saying all along in looking at the Act that you need the basic infrastructure for people to move, and we have been forwarding our wishes to the Commission and to the BIA to comply with the law.

I think in many ways—Mr. Sidney has been saying the Navajos have to comply with the law. He is talking about only a section of the law, the section that says we have to relocate.

INFRASTRUCTURE ON NEW LANDS

What about the other part? We were promised Indian health service clinics, hospitals, whatever you call it.

Mr. **Regula**. Promised in the law, or by whom?

Mr. **Zah**. By the Act itself, 1974.

Mr. **Sidney**. Mr. Chairman.

Mr. Zah. I have not finished.

Mr. Sidney. I would like to correct some of the miles figures.

Mr. Zah. Schools have to be in place.

Mr. Yates. Just a moment.

Have you concluded?

Mr. Regula. I think he is still responding.

Mr. Zah. Schools have to be in place. Housing has to be made available. And if at all possible. the lifestyle that we now lead has to remain intact if we are to do what the Act says in trying to carry out the law.

I believe if those things are not in place, we are going to have a terrible time trying to convince people, you know, that they ought to relocate. And I think those are some of the basic infrastructure that we are asking for.

To me, it is not asking for much. It may cost the Federal Government a lot of money, and that is essentially what we are saying; that the costs of relocation, the cost to the American taxpayers, is astronomical right now.

Mr. Regula. That depends on how it is accomplished.

You are saying if a hospital and a school and housing and adequate water were available, you are ready to go?

Ms. Arthur. The law requires that the relocation assure that housing and related community and water and sewer and all of those—that list that is there in the law—be there.

The comments that the Relocation Commission received from folks at the one or two meetings that they had with them indicated that there were a number of relocatees who said, Where are the schools? Where are the hospitals? Where are the roads? Will I have a house that has running water? Will I have electricity? Will I have a home near my children? Where will my grazing be?

If I have those things, yes, I will consider that and I will look at your plan. But that has never been shown to them, nor has it been even planned for. So we cannot answer the question that, yes, they would move, because that planning has not been done in the comprehensive way that the individual Navajo families had asked for.

Mr. Regula. You are saying that if we take the new lands and comply with the statutory mandate, that you are ready to move?

Ms. Arthur. There would be individual Navajo families and relocatees who would consider that move, yes. They have asked for those things. I think the comments they have made indicate that.

INTERPRETATION OF P.L. 93-531

Mr. Regula. Part of this hinges, I suppose, on the definition of what these terms in the law would encompass. When you say housing, it just says housing; assure that housing and related community facilities—talking about water and sewer—and roads, schools and health facilities be available at the relocation sites.

If that is done, in conformance with the law, then you are ready to move; is that correct?

Ms. Arthur. There are some families that——

Mr. Regula. Not some. We can't move half of them.

Ms. Arthur. There are some families that indicated, as you are well aware, that they will not move under any circumstances.

Mr. REGULA. Then they are violating the law; am I correct?

Ms. ARTHUR. You are correct.

Mr. BITSUIE. Mr. Chairman.

Mr. YATES. Has Claudeen finished her statement?

STATISTICS

Ms. ARTHUR. Mr. Yates—I believe, Mr. Chairman, that Mr. Zah wanted me to address the statistics.

By the Relocation Commission's own records, at least 500 families are physically residing on the land. So we disagree with the 208. Because there is consistently a disagreement about figures, I think that if the Congress intends to go forward with this relocation that there needs to be an outside independent agency to do a census on the ground.

The Relocation Commission figures we disagree with. I believe that the Bureau of Indian Affairs statistics are probably correct with respect to the reason that they were generated. The Bureau of Indian Affairs is interested primarily in grazing permittees. Their numbers reflect the number of people who have grazing permits. That might be a matriarch or patriarch in an extended family.

Within that extended family then there are other adults with minor children who are also living there in that camp and who are also eligible for benefits. So I think there is a grave need for arriving at the correct figures.

We went out in the field and cross-checked with the Bureau of Indian Affairs' and the Relocation Commission's own figures, the names, census numbers, and actual sites that Navajo families were living at. At four different sites in the Tuba City area we found there were 50 names on the Relocation Commission's list, but that there were an additional 73 adult full-time residents who were not on the list.

At Forest Lake, we visited 10 camps, and we had 7 people there on the list. But there were an additional 21 of those with minor children in those 10 camps.

At Hardrock, we looked at 110 camps—this is going and asking their names. Eighty were on the list, but 28 additional adults were found.

So, throughout our field checks this consistently showed that people were undercounted. The reason is very simple: The reason is that the Relocation Commission keeps their records based on what they call heads of household. The BIA keeps their records based on grazing permittees.

Our interest is number of people, actual human beings. That is the difference.

Their recordkeeping does not allow for the type of statistics that tell you the actual numbers. It is our belief, because of actual on-the-ground checking we did in the last two weeks out in the field, that the Relocation Commission's 500-family number and, what I have heard Mr. Swimmer say here, the 208, are wrong. We believe that there are more families than that physically residing on the land; in the neighborhood of a thousand families.

Mr. YATES. Whatever the number, apparently that number has to be moved then, doesn't it?

Ms. **Arthur**. That is right.

Mr. **Yates**. The point which you are making is that it will cost more money, or what is it?

Ms. **Arthur**. It is going to cost more money. The Commission and the Congress have been under the impression that the job is much smaller than it is.

Mr. **Yates**. All right.

Mr. Regula.

TRIBAL BUDGET

Mr. **Regula**. I have two questions. The first one is, does not the tribe receive substantial sums from BIA for roads, medical services, and so on, that would be made available, or should be made available as part of accomplishing this objective, because these are still people that you have tribal responsibility for?

Am I correct?

You are getting funding for that?

Mr. **Swimmer**. Yes, they are.

Mr. **Regula**. Do you know how much it would be in total?

Maybe Mr. Swimmer could answer that.

Mr. **Swimmer**. The committee, I believe, appropriated some additional funds specifically for roads to be added.

Mr. **Regula**. To BIA.

Mr. **Swimmer**. Yes, to the Bureau's Road Construction Program. The Indian Health Service benefits would have to be coming from Indian Health Service.

I am not sure what is there. I think there is a small clinic somewhere in the Sanders area that might have to be added to it.

Mr. **Regula**. Do you have any idea how much goes through BIA to the Navajo Tribes in all programs?

Mr. **Swimmer**. In every program category, everything you do?

Mr. **Regula**. Total.

Mr. **Swimmer**. Approximately $225 million.

Mr. **Regula**. $225 million?

Wouldn't some of that be available to accomplish these goals since it is for the same people?

Ms. **Arthur**. Some of that is available, yes.

Mr. **Swimmer**. I think it is.

Ms. **Arthur**. And it is used in the general BIA budget.

I want to clarify a point that you made, sir, on the lawbreakers, so to speak. The Navajo people have a right to be on that land, and those that have moved have done so voluntarily. And there are 900 families that have volunteered to move, some 1,500 that voluntarily applied for relocation benefits. So, it is not quite correct to portray them as breaking the law.

Mr. **Regula**. I asked you. I didn't say they were.

Ms. **Arthur**. They have a right to be there until the July deadline.

Mr. **Regula**. That is what I am saying. There is a point where they would be, if they continued to stay; am I correct?

Ms. **Arthur**. That is correct.

TRIBAL AND RELOCATEE CONSULTATION

Mr. **Regula**. My last question to both Chairman Zah and Chairman Sidney: The law says, and I will quote, "(1) (the relocation plan) be developed to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal councils;"

Query to both of you: Has that been done?

Mr. **Sidney**. Sir, all of the Hopis that were to move off of Navajo land have moved. And the council you are talking about were consulted as to how much assistance we can give them. This is a little off the problem.

The problem we have with BIA is, they have been telling the Hopis not to be involved in this whole relocation process because the civil rights of Navajos shall not be violated, where we, with the Hopi Tribe, could assist to relocate the people.

Mr. **Zah**. When Mr. Sidney says all the Hopis have relocated, he is talking about a dozen or two dozen as opposed to 10,000 people, Navajo people.

Mr. **Regula**. My question is: Has the Commission, to the maximum extent possible or feasible, consulted with you and your tribal council on relocation and so on?

Mr. **Zah**. No.

Ms. **Arthur**. No.

Mr. **Regula**. Maybe I would ask the Commission, why not? The law clearly says you should.

Mr. **Watkins**. I am absolutely flabbergasted that Chairman Zah would make a statement like that. This Commission has attempted in numerous ways since I have been on the Commission—and Mr. Atkinson has been there 11 years, and Ms. Massetto 7 or 8 years—I know we have been trying to communicate. And I have reams and reams and reams of letters, and so on, of correspondence and letters and inquiries and suggestions and ideas still in the file unanswered.

I am surprised Chairman Zah would make that statement. Remember, Mr. Chairman, Congressman, we are a Federal agency, I don't need to remind you, created by Congress. We are here to fulfill the commitment of the law. That is what we are trying to do.

With respect to the new lands that Chairman Zah spoke about, BLM just delivered to us—and I think they did a miraculous job in acquiring these lands as quickly as they did, not 30 days ago. This Commission, this Commissioner has attempted for the last year to make every effort we can to do this job, complete this job and go out of business, Mr. Chairman.

And I am sitting here listening to all these inquiries and statements being made, and I am going to say one more time for the record, I know this Commission and the employees of this Commission are good, sound people who are conscientious with the problem they have, the problems involved. And I think we are doing one hell of a job under all of the circumstances we are working under.

I just want everybody to know that loud and clear. I feel very happy with what the employees are doing. I feel very confident in the way we are proceeding. I am contented in the direction we are going and the progress we are making, period.

Mr. **Zah**. Mr. Chairman.

Ms. **Massetto**. We have a disagreement. I don't agree with them.

Mr. **Yates**. On what?

Ms. **Massetto**. On the issue of consultation.

Mr. **Yates**. What does that mean?

Ms. **Massetto**. I do not believe the Commission has met the statutory requirement of consultation. I went over that this morning.

Mr. **Yates**. Consultation with whom?

Ms. **Massetto**. With the Navajo Tribe and relocatees and the respective agencies.

Mr. **Zah**. Mr. Chairman.

Mr. **Yates**. Mr. Zah.

Mr. **Zah**. The Congressman's question to me was the maximum extent feasible.

Mr. **Regula**. That is what the law says.

TRIBAL CONSULTATION

Mr. **Zah**. My answer was no. It is not enough just to simply write a letter to people who will be relocated, or even to the tribal leadership. The maximum extent feasible to me means to put every effort to consult with us, and my answer to that is that they have not done that.

Mr. **Watkins**. My answer, Mr. Chairman, is, he is incorrect.

Mr. **Yates**. In what respect?

Mr. **Watkins**. I have told you. We have reams and files where we have tried to communicate with the chairman, and until Ms. Bates was assigned to the position she was, I think about a year ago, up until that time we were not getting the communication through. Since she has been there, we are now getting some work done and communications through her, because she has been assigned the responsibility of representing the tribe to the Commission.

Mr. **Yates**. Who is Ms. Bates?

Ms. **Arthur**. I am Claudeen Arthur.

Mr. **Yates**. I know you by the name of Claudeen. Peterson introduced her as Claudeen, the Attorney General. You talk about the number of letters you have written.

Mr. **Watkins**. Yes, sir.

Ms. **Arthur**. May I address that?

Mr. **Yates**. No, you may not, not for the moment, until I have made my statement.

I read to you earlier—and it seems to me that your own statement in reply to our investigating staff refutes what you are saying, Mr. Watkins, because you say this: "The Report's criticism of the counseling program is inaccurate, unfair, and does not take into account the general lack of education and degree of acculturation of relocatees."

Mr. **Watkins**. Yes.

Mr. **Yates**. You write the Navajos' letters. How are they going to understand the consequences of those letters?

Mr. **Watkins**. Mr. Chairman, I responded to Chairman Zah's statement that we were not working in conjunction with the Navajo Tribe. That is their statement. That is the statement I refute, sir.

We are. We are attempting. We have attempted for many months, and we have reams of correspondence and files of evidence of our efforts to communicate and to try to complete this task.

Chairman Zah knows that.

Mr. YATES. Okay. That had nothing to do with the counseling.

Mr. WATKINS. No, sir.

Mr. YATES. I see.

Ms. Massetto, would you agree with that?

Ms. MASSETTO. Do I agree with what Mr. Watkins said?

Mr. YATES. Yes.

Ms. MASSETTO. No.

Mr. WATKINS. I can prove——

Mr. YATES. We have general agreement upon disagreement.

Ms. MASSETTO. You can cosmetically do something. You can send me a letter and say show up on every day we are going to do planning. That is exactly the kind of letter that has been sent out to the Navajo Tribe. That is crazy.

Mr. ZAH. Sure.

Ms. MASSETTO. We had a meeting at Chambers; a good meeting. People came. People participated. We had one meeting, one meeting in October. We have not had another planning meeting like that since then. One meeting doesn't make consultation.

COMMISSIONER VISIT TO THE HPL

Mr. ATKINSON. Mr. Chairman, we have consulted with the Navajos since 1976. When we first started the Commission, we were skeptical or didn't want to go out on the reservation because we were not sure we would be welcome.

Mr. YATES. How many times? How frequently do the Commissioners go to the chapters?

Mr. ATKINSON. We go when we are invited.

Ms. MASSETTO. That is not correct. I go out to the reservation and to the chapters at request. Sometimes I go out unannounced, like I did two weeks ago to Hardrock. That is not quite true for all of us.

Mr. ATKINSON. I don't agree with her at all, Mr. Chairman.

Ms. MASSETTO. That is not true.

Mr. YATES. We can agree on the fact that there is a lot of disagreement.

Mr. ATKINSON. If I may finish.

Mr. YATES. Mr. Atkinson, you have the floor. You may finish what you were saying.

Mr. ATKINSON. In 1976, we were criticized by the Navajo tribal elected officials, mainly Mr. McDonald, for not going out on the reservation and talking to the people. We did not know we were going to be welcome to do it until we did that. But we went out and called on chapter after chapter, 12 of them involved in this. We talked to them.

Finally, we went to a meeting one day. It was probably 1977. And the chapter president took one look at me and says, "What are you doing here?"

I said, "Well, we came out to talk about relocation."

He said, "Well, I didn't invite you. I have my agenda"—and he took me by the arm and showed me the agenda, and he said, "you are not on it."

He was courteous enough and kind enough to let us go ahead and be on the program anyway. But from that day on, we said we could not go to any chapter house unless we were notified. We have done that. I would still not go to a chapter house unless invited.

Mr. YATES. Unless you are invited.

Mr. WATKINS. Yes, sir. That is right.

Mr. ATKINSON. Yes, sir.

Mr. YATES. How are you going to get the work done if they don't invite you?

Mr. WATKINS. They have invited us.

Mr. YATES. Have they?

Mr. WATKINS. I have been out there many times to the reservation, yes, and I am glad to see Ms. Massetto has been out.

Mr. REGULA. Navajo or Hopi reservation?

Mr. WATKINS. Both, sir.

The one meeting before this, we had at the Navajo Tribal Council, and the one before that at the Hopi Tribal Council. We had our Commission meetings at the Navajo Tribal Council, the one before that; and the one before that was at the Hopi Tribal Council. We met with both councils, sir.

SETTLEMENT

Mr. YATES. You have been waiting to say something. It is your turn, Mr. Sidney.

Before that, can I ask you a question?

In the reading I have done, either in the Law Review article that appeared in the Arizona Law Review or in this book entitled "The Second Long Walk" about this dispute, there is a statement there that—of discussions that you had with Peterson Zah, the first of which he offered to make a settlement, a cash settlement, of a dispute. And you came back with an offer to exchange Big Mountain for some coal mine.

Mr. SIDNEY. Yes.

Mr. YATES. Is my memory correct in having read that? Did that take place?

Mr. SIDNEY. Mr. Chairman, I am afraid the book is pretty much biased.

Mr. YATES. That was my impression, too, as I read it. That is why I asked you the question.

Mr. SIDNEY. No. At one time, on my recollection, it was recommended to the Hopis to consider a land exchange for part of the coal lands. It was recommended——

Mr. YATES. Big Mountain for the mine?

Mr. SIDNEY. For the Big Mountain exchange.

That was recommended by our attorney to us, John Kennedy. That is why he is not here with me any more. We said, you know, no way.

Mr. YATES. So that was not from the Hopis to the Navajos then?

Mr. SIDNEY. No.

Mr. YATES. Okay. That clarifies that.

Mr. **Sidney**. Okay.

Mr. **Yates**. I can't help thinking, you know, here we have spent almost $100 million trying to do this. The Federal Government will spend, under the Commission's policy, another $300 million. Wouldn't it have been easier to find a way of settling it for cash as they do in the other areas?

Mr. **Zah**. Yes.

CASH PAYMENT

Mr. **Yates**. I pointed out earlier—you may not have been here—that was done by the Penobscots in Maine, and the others?

Mr. **Zah**. Alaska and New Mexico.

Mr. **Swimmer**. Passamaquoddy.

Mr. **Sidney**. I would say, though, Mr. Chairman, our *Healing* v. *Jones*——

Mr. **Yates**. I read it.

Mr. **Sidney** [continuing]. Is Navajos acquired half the Hopi interests primarily on squatter rights.

Mr. **Yates**. Right.

Mr. **Sidney**. So we are on the half given to us. And at this point we are talking about numbers.

Mr. **Yates**. I don't think there is any question about that, Mr. Sidney. I think that originally the time of the Jones case, the Navajo had encroached on Hopi land.

Mr. **Sidney**. Yes.

Mr. **Yates**. There were so many more Navajo than Hopi. They did encroach on your land. That is why the court at that time established a joint use area; it didn't set any line. Their numbers were still great.

The Congress authorized the line to be drawn. The line was drawn by the court.

Mr. **Sidney**. Yes.

Mr. **Yates**. That is what the subject of the dispute is today, except in other cases of similar cases the parties have been able to get together with the Federal Government and work out their arrangement.

I was just commenting, isn't it unfortunate that it couldn't have been done here because we are faced with an enormous payment of money in the future in order to carry out the law.

HISTORICAL REVIEW OF DISPUTE

Mr. **Sidney**. Mr. Chairman, let me respond this way: In 1882 when there was designated for the Hopi—there was 300 Navajo families there, according to *Healing* v. *Jones* testimony. In 1982, there was 8,800 Navajos. That is how much people moved on to it. That is how they gained it.

I want to rebut the earlier statement of Chairman Zah when he said relocation is terrible. That is how the Hopis have been driven off the land and put in the villages. We are not on mesas because of a flood. We are there because of protection. And we have been forced off our lands, no compensation. And in 1974, there was really no consideration to pay the Navajos to move.

They went back to the Navajos and said, "It was your fault. You made us move illegally on Hopi land. You pay us off to move."

I think we should get the record straight here. As far as the miles of the hospital stated earlier, Gallop is only 50 miles away, and it is a surgical unit. Some of the Navajos who are living in the Big Mountain area today have to drive 60 to 70 miles to the Keams Canyon Hospital, a non-surgical hospital.

I respect the gentleman's question. The Navajos have the largest base, with the largest population, and they get the most funds of all the Indian Tribes. But they need to prioritize within themselves.

To stand behind Mr. Watkins' statement that this issue has to take my attention, Mr. Zah's attention, without our attorneys, we stated that before. We will make decisions on what our religious leaders will say.

I go to Relocation Commission meetings to make my reports. I have never seen Chairman Zah there. I see the other contacts. So I think these are things that you need to look at.

Mr. YATES. Would you like to meet with him later? I would arrange it.

Mr. SIDNEY. Yes. In fact, we have a meeting scheduled at 1 o'clock.

Mr. REGULA. Maybe that will take care of our problems.

Mr. YATES. Where are you meeting?

Mr. SIDNEY. With McCain and Udall, I believe. Maybe as a good start we can go both steaming from here.

Mr. YATES. Well, I am going to adjourn this meeting and ask you—you are meeting with them at 1 o'clock. Do you think you will be through by 1:30 or 1:45?

Mr. SIDNEY. Probably 2 o'clock, I would say.

Mr. YATES. Okay.

Mr. SIDNEY. I have a statement here for the record.

Mr. YATES. Chairman Sidney's statement will be inserted in the record.

[The statement of Mr. Sidney follows:]

Let us first talk about how we go to this point and who has gained by all this.

When the land was divided by Congress and approved by the Courts it was the Hopis that lost 911,000 acres of ancestral lands. The Navajo Tribe acquired these lands through "squatters rights".

When the 1974 Navajo-Hopi Land Settlement Act was passed the Navajo Tribe claimed it did not have enough land available in its 16 million acre reservation to resettle the 680 Navajo families that would be displaced. Therefore, the Navajos pleaded with Congress to allow the tribe to purchase an additional 400,000 acres of public lands for the purpose of relocating these families.

In 1980 the Navajo Tribe went back to Congress and said it is the governments fault that we have to relocate, therefore, you should give us this land. Congress gave in and made a gift of the land to the Navajos.

Relocation has thus far netted the Navajo Tribe with 911,000 acres of Hopi lands plus an additional 400,000 acres of public lands for a grand total of 1.3 million acres.

$85 million has been spent in relocating Navajos from Hopi partioned lands. Of the $85 million spent some $80 million has been spent on direct benefits to the Navajo Tribe for relocation of some 900 Navajo families.

In addition the Navajo Tribe has been granted the sub-surface rights to the new lands they have now acquired under the Act. Estimates of the value of these surface rights exceed $500 million. Here again, the Navajo Tribe is being rewarded with an additonal $500 million in benefits.

The question really is: Who benefits from the Relocation Program. Certainly not the Hopi Tribe and certainly not the American public.

Again, let us recap what the Navajo Tribe has acquired in benefits thus far. First, 911,000 acres of Hopi ancestral lands under squatters rights. Second, 400,000 acres of public lands. Third, $80 million in direct benefits. Fourth, $500 million in natural resources. For a grand total of 1.3 million acres of land and 580 million dollars in direct benefits.

As we can see the Navajo Tribe is talking expansion and asking for the keys to the treasury at the same time.

I ask again, who benefits by the law? Certainly not the Hopi people nor the American public.

The Navajo Tribe has argued it does not have enough land to support its people. What the Navajo Tribe does not tell you is that in 1868 they signed a peace treaty with the U.S. in return they were given a 3.5 million acre reservation in NE Arizona. Today, thru the use of political vote power along with millions expended in public relations and lobbying, the Navajos have gained over 16 million acres in land. The Navajo Reservation has been enlarged 14 times by Executive Order or Acts of Congress since 1868. The Navajo Reservation is nearly three times the size of your state Illionis, Congressman Yates, with less than 10 percent of the population of Chicago.

What the Navajo Tribe doesn't tell you as well is that not only is it the largest tribe with the largest land base in the United States, it is also the richest tribe in the United States.

The Hopi reservation is 614,000 acres. The courts are returning 911,000 acres of traditional Hopiland to us. Today, we are in the midst of the Navajo Reservation. A small island in the mist of a 16 million acre empire with continued plans for expansion and acquisition.

Let us now talk about the present day situation. The relocation law is nearly implemented. 98% of the Navajo families on Hopi partioned lands have voluntarily signed contracts agreeing to relocate. There are only a few families who refuse to move or accept relocation from Hopi partitioned lands.

Many of the families who are presently refusing to move are doing so because they are waiting for the Navajo administration to allow them to move onto the old Navajo Reservation. The Navajo administration is doing nothing to assist these Navajo families in obtaining homesite leases. The Navajo administration is doing nothing to help the Relocation Commission get its job done.

It is totally unreasonalbe and in fact absurd for the Navajo Chairman to demand the Hopi Tribe agree to let him keep an additional 350,000 acres of scarce Hopiland so that the non-compling Navajos cam remain where they are now.

The Hopi Tribe has complied with the law. 98% of the Navajo families are willing to comply with the law. It is unfair for those Hopi and Navajo families who are law abiding to now be penalized for complying with the law while the non-compliers be rewarded.

It is unreasonable to delay the relocation process or to change the law in order to pacify the non-complying Navajos and the agitators in the Big Mountain area. The Hopi Tribe relocated their families as mandated by law. It is now just as unreasonable to penalize my people for complying with the law.

I call on the Navajo Tribal Chairman to seek ways and means by which the relocation process can proceed in a smooth and orderly fashion. I call on the Navajo chairman to stop disrupting and confusing the process. I call on the Navajo chairman to show compassion for his people and tell them he will protect them against outside agitators. I call on the Navajo chairman to truly demonstrate that compassion for the elderly Navajo people by allowing them to relocate to the present Navajo reservation which in many cases is just a few feet over the boundary line.

We ask this Congressional Committee to look at the facts. We ask you to look at the history of the Hopi people. The Hopi have not infringed on Navajo lands. The Hopi have not infringed on the rights of the Navajos presently occupying Hopiland. The Hopi people are not asking for money or for more lands. We are merely asking that our rights be protected.

We are asking that the land deemed ours by the Courts and Congress be returned to us. This land is our heritage. This is our culture. We are a growing nation with many needs and plans for our land. This land will help us again retain our true self-sufficiency.

We remind this committee that we are a small minority within a minority. We have been ravaged by the wars of others. We are now fighting for our survival. The Navajo Chairman on the other hand is asking you to expand his reservation once again.

Our elders have prophesized people from the East will come to our support. We pray that Congress will help fulfill that prophecy.

Mr. YATES. We are going to break now and come back at 2 o'clock.

AFTERNOON SESSION

SANTA FE AND PACIFIC RAILWAY COMPANY STATEMENT

Mr. YATES. Ms. Reporter, will you put into the record the statement made by Mr. Jerome C. Muys, on behalf of the Santa Fe and Pacific Railway Company and various legal issues affecting the Navajo/Hopi Relocation Program, put them in the record at this point.

[The statement of Mr. Muys follows:]

STATEMENT

OF

JEROME C. MUYS

on behalf of

SANTA FE PACIFIC RAILROAD COMPANY

on

LEGAL ISSUES AFFECTING THE NAVAJO-HOPI RELOCATION PROGRAM

Before the

SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES

of the

COMMITTEE ON APPROPRIATIONS

of the

UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.

February 4, 1986

Mr. Chairman, I am Jerome C. Muys, a partner in the Washington, D.C. office of Holland & Hart, a Denver law firm, and Washington counsel for Santa Fe Pacific Railroad Company ("Santa Fe") on land and natural resources matters. I appreciate this opportunity to describe for the Subcommittee the dispute between Santa Fe and the Bureau of Land Management ("BLM") regarding the BLM's acquisition of the surface only of the so-called Wallace, Roberts, Kelsey and Spurlock ranches in Arizona for the purpose of relocating certain Navajo families from the portion of the former Navajo-Hopi Joint Use Area which has been judicially partitioned to the Hopis, since I understand that this issue has not previously been presented to the Committee. At this point I would like to request permission to include in the hearing record a copy of the letter of January 30, 1986, to you, Mr. Chairman, from Mr. Gregory M. Pensabene, describing the controversy and including certain background documents.

The four ranches comprise some 176,500 acres, in which Santa Fe owns the underlying minerals in approximately 140,000 of those acres where the surface was owned, prior to the disputed exchanges, by private parties. The remaining 36,500 acres were owned primarily by the State of Arizona. Santa Fe also owns some 100,000 acres of reserved minerals underlying the 107,000 acre Bar-N Ranch which adjoins the other four ranches. The surface of the Bar-N Ranch is owned in fee by the Navajo Tribe, which plans to dedicate the ranch to relocation and have it made part of the Reservation at some time in the future. All of these lands are shown on the map appended to my testimony and which I request also be made a part of the record at this hearing.

Pursuant to the 1980 amendments to the Navajo-Hopi Relocation Act of 1974 (P.L. No. 96-305, 94 Stat. 930), the Navajo Tribe selected for acquisition the four referenced ranches in 1983. In its selection the Tribe specifically requested that BLM acquire both the surface and the minerals of the designated ranches, apparently relying on the same understanding of the Relocation Act that was shared by Santa Fe, namely that the BLM was to acquire both the surface and the minerals for the Tribe. Nevertheless, although the BLM has acquired the full fee interest in some 29,360 acres owned by the State of Arizona within the ranches, both surface and minerals, it has only acquired the surface of those lands overlying Santa Fe's minerals. Although Santa Fe and the BLM initially entered into negotitions for the acquisition of Santa Fe's minerals by exchange, the BLM abruptly terminated those negotiations in December 1984 without explanation and has steadfastly refused to even discuss the matter since that time.

Santa Fe appealed that decision to the Interior Board of Land Appeals, which last Thursday rendered an opinion expressing concern with the implications of the BLM's actions but nevertheless sustaining the challenged transactions. I will discuss the Board's decision in more detail, but first I would like to provide some background to the controversy.

When Congress was considering amendments to the Navajo-Hopi Relocation Act in 1980, Santa Fe was concerned that the proposed legislation would authorize the Secretary of the Interior to accept certain lands from the Tribe in trust for relocation purposes where the Tribe owned the surface overlying Santa Fe's minerals. Santa Fe was and is deeply concerned that those minerals not become part of the Navajo Reservation or otherwise subject to Navajo tribal jurisdiction, which would be the result if the Secretary accepted such split estate lands in trust. Consequently, we explained our concern to the House and Senate conferees on the Relocation Act. We were only concerned about possible split estate transfers by the Tribe. We assumed that BLM would not be transferring any split estate lands it administered to the Tribe, since that would be inconsistent with the basic relocation objectives of the Act.

The conference committee agreed to impose a ban on acceptance of split estate lands by the Secretary for a three year period, and the Relocation Commission was directed to submit a report to Congress on the status of the relocation program at that time (25 U.S.C. § 640d-10(f)(1) and (2)):

> (1) For a period of three years after July 8, 1980, the Secretary shall not accept title to lands acquired pursuant to subsection (a)(2) of this section unless fee title to both surface and subsurface has been acquired or the owner of the subsurface interest consents to the acceptance of the surface interest in trust by the Secretary.

> (2) If, ninety days prior to the expiration of such three year period, the full entitlement of private lands has not been acquired by the Navajo Tribe and accepted by the Secretary in trust for the Navajo Tribe under the restrictions of paragraph (1) of this subsection, the Commission, after public notice, shall, within thirty days, make a report thereon to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs.

Congress apparently did not want to provide for a permanent ban on the acquisition of split estates, inasmuch as a reluctant minerals owner might frustrate the acquisition of essential relocation land by refusing to enter into a sale or exchange of its interests. If the split estate restriction was not hindering the relocation program, presumably Congress would have extended the ban. If it was interfering, I assume Congress would have granted the BLM or the Relocation Commission the power, withheld in the 1980 amendments, to acquire the mineral interests from any recalcitrant owners by condemnation.

Unfortunately Congress' approach to the problem was frustrated by the Relocation Commission's failure to file the required report in 1983. Thus Congress was deprived of the opportunity to revisit the issue and Santa Fe was to find itself deprived of the protection afforded it in 1980. Moreover, it was subsequently to learn, to its surprise and anger, that BLM would assert the authority to carry out indirectly the equivalent of the very same direct split estate transactions that Congress had banned for 3 years in 1980. Let me emphasize that the predicament we find ourself in stems in large measure from the Relocation Commission's failure to honor the 1980 Act's command to report fully and openly to Congress and the public on the split estate issue.

In any event, as I have mentioned earlier, the Tribe selected the four ranches at issue in 1983, and specifically requested the BLM to acquire the mineral interests. This request was made against the background of an earlier Solicitor's opinion concluding that the Tribe was entitled to any minerals in federal lands selected and conveyed to it under the original relocation authority contained in the 1974 Act. The Navajos obviously assumed, as did Santa Fe, that, given the relocation objectives of the legislation, the BLM would similarly acquire full fee interests for the Tribe pursuant to any exchanges. That assumption proved to be wrong, and BLM began negotiations to acquire only the surface of the ranches.

When Santa Fe finally learned by inquiry the status of the proposed exchanges, it discussed an exchange covering its mineral interests with BLM officials in the Arizona State Office. On October 26, 1984, at the BLM's request, and in language suggested by BLM, Santa Fe confirmed its discussions with BLM officials and proposed that the BLM exchange Santa Fe's mineral interests in the ranches selected by the Navajos for relocation for BLM minerals. On December 19, 1984, contrary to earlier assurances, the BLM abruptly rejected Santa Fe's proposed exchange with no explanation other than that it would not be in the "public interest." This was difficult for Santa Fe to understand, since the BLM was vigorously pursuing a policy of exchanges with the State of Arizona for its surface and mineral interests in the ranches. Subsequently, the State Director wrote Santa Fe on January 23, 1985, asserting that "since the Relocation Act is specifically intended to provide land for occupancy, there would be no advantage for the United States to acquire any of the privately held mineral estate."

On November 7, 1984, the BLM acquired the Wallace Ranch and subsequently patented to Wallace's successors in interest the BLM exchanged lands.

Apparently some time after the Navajos selected the Kelsey and Roberts Ranches, a New Mexico developer named Charles L. Crowder purchased the surface interests of those ranches. He then proposed to the BLM that it exchange BLM land adjacent to his residential, commercial and industrial development near Santa Teresa, New Mexico for the surface interest in the two ranches. On February 6, 1985, the BLM entered into an agreement to acquire the Roberts and Kelsey Ranches. On February 27, 1985, Santa Fe filed protests with the BLM opposing the three exchanges. On March 25, 1985, the BLM denied the protests, and Santa Fe filed notices of appeal to the Interior Board of Land Appeals ("IBLA") on April 22, 1985. The BLM consummated the exchanges for those two ranches on or about June 7, 1985, despite the pendency of Santa Fe's appeals challenging the validity of the transactions.

On June 5, 1985, Santa Fe filed a protest against the pending Spurlock Ranch exchange with the BLM Arizona State Director. That protest was denied by letter of July 1, 1985 and the BLM entered into an exchange agreement with the Spurlock interests the next day. The appeal of that decision was filed on July 16, 1985.

Santa Fe presented the following arguments before the IBLA.

(1) The Relocation Act does not authorize the BLM to acquire only privately owned surface estates for the purpose of relocating displaced Navajos, but rather intended the BLM to acquire the mineral interests as well.

(2) The exchanges violate the restrictions on interstate exchanges contained in section 206 of the Federal Land Policy and Management Act of 1976 ("FLPMA"), which the Relocation Act intended would govern the exchanges authorized in 1980, as well as the Secretary's exchange regulations under FLPMA.

(3) The exchanges violate the restriction in the 1980 Relocation Act amendments which provides that "not to exceed thirty-five thousand acres of land so transferred or acquired [for benefit of the Navajo Tribe] shall be selected within the State of New Mexico". 25 U.S.C. § 640d-10(c).

(4) The development potential and marketability of Santa Fe's reserved mineral interests may not lawfully be impaired by placing them under the sovereignty of the Navajo Tribe without Santa Fe's consent or affording Santa Fe a due process hearing.

When Santa Fe filed its appeal with the IBLA, we successfully argued before the Board that the surface exchanges should be stayed pending a resolution of what the Board referred to as the "substantial legal issues" raised in our appeal. However, Secretary Hodel later assumed jurisdiction over the appeal and directed that the exchanges be made effective notwithstanding the pending appeal. At that time Santa Fe was requested by BLM Director Burford and former Interior Secretary William P. Clark, President Reagan's special representative appointed to attempt to resolve the Navajo-Hopi relocation controversy, not to seek an injunction against the completion of the transactions because it might permanently impair certain exchange agreements with third parties and substantially set back the relocation program. Santa Fe agreed that it would not seek judicial relief at that time on specified conditions set forth in a letter of June 6, 1985 from Santa Fe's counsel to Secretary Hodel. One of the specified conditions was that "the _status quo_ is maintained on the surface of the lands acquired by the BLM pending a final decision on the merits, _i.e._, no relocation or construction activities be permitted". The BLM and the Relocation Commission subsequently agreed by letter of June 20, 1985, to give Santa Fe 20 days notice prior to any "surface disturbing activities" on surface areas overlying Santa Fe's reserved minerals pending a decision by the IBLA. Santa Fe was satisfied that such notice would give it adequate opportunity to seek judicial intervention to prevent construction of roads, houses or other facilities pending ultimate resolution of the legal issues involved in its challenge to the exchanges.

Just last week, on January 30, 1986, the Board sustained the challenged exchanges (90 IBLA 200), and I would like to submit the Board's decision for inclusion in the hearing record. With respect to the principal issue of whether Congress intended BLM to acquire both surface and mineral interests for the Tribe when it utilized its exchange authority, the Board concluded as follows (90 IBLA at 211, 212 (emphasis in original)):

> Notwithstanding the intent and purpose of the Act, we find no *legal* requirement therein that BLM acquire Santa Fe's mineral interests. Clearly, the intent of the Relocation Act is to effect a permanent solution to the Navajo-Hopi land dispute by relocating Navajo Tribe members on lands transferred or acquired under the Relocation Act. That those members might be disturbed in their use of that land by possible future mineral operations by Santa Fe is troublesome, but does not impose a legal obligation on the Secretary to acquire that interest at this time.
>
> * * *
>
> We cannot attribute to Congress what it has not stated.

With regard to whether or not the exchange authority of section 206 of FLPMA applies to these exchanges, the Board agreed with Santa Fe that it does, but found that the section's restriction on interstate exchanges had been modified by implication in the 1980 amendments to permit such exchanges. (90 IBLA at 217). As to Santa Fe's contention that the BLM failed to follow the applicable notice and public participation procedures of its own exchange and planning regulations, the Board ruled as follows (90 IBLA at 219):

> Second, BLM argues in essence that even if such procedures apply, BLM complied. There can be no question the Federal Register notices for the Wallace and Spurlock exchanges did not adhere to the regulation (43 C.F.R. 2200.1(c)) governing the informational requirements for notices of realty action. Those notices failed to describe the non-Federal land proposed for exchange, although they did refer to the lands as having been selected by the Navajo Tribe. The identity of the parties to the exchange was not disclosed. The terms and conditions of the exchanges were not included, nor were public comments solicited in all notices. Even where comments were solicited, the notices did not indicate any time period for comment as set forth in 43 C.F.R. 2201.1
>
> Despite those deficiencies, the record does not indicate that Santa Fe was in any way prejudiced by BLM's failure to include complete information in those notices. Santa Fe was apparently aware of the potential acquisition of the private lands overlying its mineral interests as early as August 1983, and it had sufficient opportunities to express its concerns about the exchanges. . . . While BLM is certainly subject to criticism for failing to adhere strictly to the regulations, any inadequacies in those notices do not constitute a basis for negating the Wallace and Spurlock exchanges. BLM provided notice to the public concerning those exchanges, and Santa Fe was, in fact, cognizant of the details thereof. Under the circumstances, Santa Fe has not established a violation that would require overturning the exchanges.
>
> The same holds true for the planning regulations. . . .

As to the restriction that "not to exceed thirty-five thousand acres of land so transferred or acquired [for the benefit of the Tribe] shall be selected within the State of New Mexico", the Board found that the fact that BLM lands in excess of that limitation were transferred to private owners in New Mexico for the benefit of the Tribe did not violate the restriction because no Tribal members are going to be relocated to any of those lands. (90 IBLA at 213).

Finally, the Board rejected Santa Fe's due process arguments, finding that it had received an adequate "day in court" (90 IBLA at 219-20).

In my view the Board erred on at least the first three issues, and I will recommend that Santa Fe promptly seek reconsideration of those issues by the Board. If reconsideration is sought and denied, I will recommend that Santa Fe ask the Secretary to exercise his authority to assume jurisdiction over the appeal and reverse the Board on the question of the BLM's obligation to acquire our minerals. If the Secretary declines to exercise his authority, I will recommend that Santa Fe file an action for judicial review of the decision and seek either (1) an agreement from the Secretary not to initiate construction of any roads, homes or other relocation facilities until the matter is resolved or, (2) failing such agreement, a temporary restraining order or preliminary injunction to the same effect. On the merits of the Board's decision, I believe we have a good chance of prevailing in court, and an even better chance if we are supported by the Navajo Tribe.

Our preferred alternative to further litigation, however, would be for Congress to clarify what we believe was its intent in the 1980 legislation by directing BLM to acquire our minerals, by exchange or purchase. Santa Fe is not attempting to profit from the relocation process. It is simply trying to protect its mineral land base, an aim I am sure you can appreciate and one which we believe Congress had in mind when it last addressed the relocation issue. To keep BLM's feet to the fire, the Committee should ban any expenditure of funds by the Relocation Commission for construction of relocation facilities on the portion of the ranches in which Santa Fe owns the minerals until the exchange is completed, which I estimate should take about two years. Any such exchange would, of course, have to meet the public interest factors set forth in FLPMA. This approach would have the added benefit of providing a de facto further deferral of the current relocation deadline, which would provide the opportunity for the Navajos and Hopis, as well as any other interested parties, to continue the negotiations initiated by former Interior Secretary Clark in an attempt to resolve the basic relocation impasse.

Santa Fe shares this Subcommittee's concern with the unfortunate personal circumstances surrounding the relocation program. We do not wish to prolong this process, but to aid its quick, fair and compassionate conclusion. Although Santa Fe has repeatedly made it clear to the Secretary, the BLM, the Relocation Commission, and the IBLA that it has absolutely no desire to disrupt the relocation program, Santa Fe is determined to take all necessary action to prevent its 240,000 acres of reserved mineral interests from becoming subject to the jurisdiction of the Navajo Tribe without compensation by exchange or otherwise. Consequently, Santa Fe believes that it would not be in the public interest, i.e., the interests of the Navajos, the Hopis, Santa Fe or the United States Treasury, for Congress to continue to appropriate funds for that program without careful consideration of the possible impact on the program which Santa Fe's legal challenge to the exchanges may pose.

I will be pleased to try to answer any questions the Subcommittee may have.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
ARIZONA STATE OFFICE
3707 N. 7th Street
P.O. Box 16563
Phoenix, Arizona 85011

IN REPLY REFER TO:
2200 N-II (930)

June 20, 1985

Mr. Jerome C. Muys
Holland & Hart
Attorneys at Law
1875 Eye Street, N.W.
Washington, D.C. 20006

Dear Mr. Muys:

In your letter of June 6, 1985, addressed to Secretary Donald Paul Hodel (Re: Opposition to Request for Secretary to Intervene in Santa Fe Pacific Railroad Company, IBLA 85-584), you set forth several reasons for opposition to the proposed exchange of lands in the Wallace, Kelsey and Roberts ranches. These issues have been addressed in the Secretary's June 7, 1985 decision.

A further concern was discussed by Mr. Greg Pensabene with Acting Assistant Secretary Griles relating to written notification to Santa Fe of surface-disturbing activities pending the Interior Board of Land Appeals (IBLA) deliberation and decision on the merits of the appeal. The Chairman of the Commission and I have discussed Santa Fe's concern and agree that such notice could be provided while awaiting IBLA's decision on the case. The Commission will transmit notice to you on behalf of Santa Fe 20 days in advance of any such activity on the former Wallace, Kelsey and Roberts properties. The Commission does not by this action create any rights in Santa Fe or duty on the government not already existing.

If you have further questions concerning this matter, please let me know at your convenience.

Sincerely,

D.Dean Bibles
State Director

IN REPLY REFER TO

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203

SANTA FE PACIFIC RAILROAD CO.

IBLA 85-584 Decided January 30, 1986
85-776

Appeals from decisions of the Arizona State Office, Bureau of Land Management, denying protests to certain private land exchanges. A 18416, A 18416-C.

Affirmed.

1. Exchanges of Land: Generally--Private Exchanges: Protests--Rules of Practice: Appeals: Effect of--Rules of Practice: Protests

   Under certain circumstances a document styled as a protest is properly treated as an appeal. Thus, where prior to completion of a private exchange by BLM, the owner of the mineral interest in the private land involved therein requests that BLM acquire its interest and BLM proceeds to complete the exchange and subsequently deny the request, a protest filed by the owner should be treated by BLM as an appeal of its denial and the case file forwarded to the Board of Land Appeals.

2. Exchanges of Land: Generally--Indians: Generally--Private Exchanges: Generally

   A surface-only private exchange undertaken pursuant to sec. 11 of the Relocation Act, 25 U.S.C. § 640d-10(a)(1) (1982), over the objection of the owner of the mineral interest in the private land involved in the exchange does not violate that Act. The Act imposes no legal requirement on the Secretary of the Interior to acquire such interest.

3. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges--Indians: Generally--Private Exchanges: Generally--Statutory Construction: Generally

   While sec. 206 of the Federal Land Policy and Management Act, 43 U.S.C. § 1716 (1982), is applicable to exchanges under 25 U.S.C. § 640d-10 (1982), the general prohibition of sec. 206 barring interstate exchanges is inapplicable. The specific language of 25 U.S.C. § 640d-10(b) (1982), providing that BLM lands anywhere within Arizona and New Mexico may be used for purposes of exchanging for lands within 18 miles of the boundary of the Navajo Reservation, is an exception to that general prohibition and is, thus, controlling.

4. Exchanges of Land: Generally--Federal Land Policy and Management Act of 1976: Exchanges--Indians: Generally--Private Exchanges: Generally--Regulations: Applicability

The exchange regulations at 43 CFR Part 2200 apply to exchanges made pursuant to 25 U.S.C. § 640d-10 (1982). While those regulations set forth specific information requirements to be included in notices of realty action, a deficient notice does not negate an exchange thereunder, where the person asserting the deficiency had notice of the exchanges, the opportunity to comment, and was not prejudiced by BLM's failure to provide complete information therein.

5. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Appeals: Effect of--Rules of Practice: Hearings

Due process does not require notice and a prior right to be heard in all cases in which there is an alleged impairment of property rights so long as the person is given notice and an opportunity to be heard before the alleged impairment becomes final. Appeal to the Board of Land Appeals satisfies the due process requirements.

APPEARANCES: Jerome C. Muys, Esq., John F. Shepherd, Esq., Washington, D.C., Jeffrey T. Williams, Esq., Chicago, Illinois, for Santa Fe Pacific Railroad Company; Daniel L. Jackson, Esq., Office of the Field Solicitor, Phoenix, Arizona, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Under consideration in this case are two consolidated appeals of Santa Fe Pacific Railroad Company (Santa Fe). The first, IBLA 85-584, is an appeal from decisions of the Arizona State Office, Bureau of Land Management (BLM), denying protests against three exchanges by BLM of certain public lands in Arizona and New Mexico for the surface estates of private lands in Arizona, more particularly, the Kelsey Ranch, the Roberts Ranch, and the Wallace Ranch. 1/ The second, IBLA 85-776, concerns the Arizona State Office,

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1/ On May 10, 1985, BLM filed a motion, pursuant to 43 CFR 4.21(a), seeking an order giving its decisions under appeal in IBLA 85-584 full force and

BLM, denial of Santa Fe's protest of another exchange, involving the Spurlock Ranch. 2/ The United States sought to acquire these private lands in furtherance of its obligations under the Act of December 22, 1974, 88 Stat. 1712-23, *as amended* by the Navajo and Hopi Indian Relocation Amendments Act of 1980, 94 Stat. 929-36, and section 106 of the San Juan Basin Wilderness Protection Act of 1984, 98 Stat. 3155, 3157-58. 3/ All four ranches were selected by the Navajo Tribe under the Relocation Act for relocation of certain Navajo Tribe members from the Hopi Tribe's portion of the Navajo-Hopi Joint-Use Area in northern Arizona. Santa Fe opposes the acquisition of the surface estates of the ranches without the further acquisition of the mineral interests owned by Santa Fe.

Background

In an Executive Order dated December 16, 1882, President Chester A. Arthur withdrew approximately 2,500,000 acres of land in northeastern Arizona for the use of the Hopi Indian Tribe and "such other Indians as the Secretary of the Interior may see fit to settle thereon." Over the years the Navajo Indian Tribe has also utilized the lands set aside by President Arthur, resulting in substantial disagreement between the Navajo and Hopi Tribes as to ownership and use rights of this land. Attempts to resolve the controversy led to passage of the Act of July 22, 1958, 72 Stat. 403, authorizing the tribes to seek a determination of their respective claims to the land in the U. S. District Court for the District of Arizona. In *Healing* v. *Jones*, 210 F. Supp. 125 (D. Ariz. 1962), *aff'd*, 373 U.S. 758 (1963), the court awarded exclusive use of approximately 1/4 of the reservation to the Hopi Tribe, but, as to the

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fn. 1 (continued)
effect pending the Board's ruling on the appeal. On May 28, 1985, Santa Fe filed a response opposing the motion. By order dated May 31, 1985, the Board denied BLM's motion. On June 7, 1985, Secretary Hodel, at the request of BLM, assumed jurisdiction of the case, pursuant to 43 CFR 4.5, and granted BLM's motion. He did not, however, rule on the merits of Santa Fe's appeal, but referred the case back to the Board for decision.

2/ On Aug. 19, 1985, BLM filed a request with the Director, Office of Hearings and Appeals, that he assume jurisdiction of IBLA 85-776, pursuant to 43 CFR 4.5, and give immediate effect to the decision under appeal in accordance with 43 CFR 4.21(a). Santa Fe filed an opposition to the request on Aug. 20, 1985. By order dated Aug. 21, 1985, the Acting Director assumed jurisdiction, granted BLM's request, and returned the case to the Board for a decision on the merits.

3/ These statutes are codified at 25 U.S.C.A. §§ 640d through 640d-28 (West. Supp. 1984). Section 106 of the 1984 Act amended only 25 U.S.C. § 640d-10. The 1974 and 1980 Acts are separately or collectively referred to by the parties at various times as the "Settlement Act" or "Relocation Act." For purposes of continuity, our reference will be to the "Relocation Act." More specific reference to any of the three acts will be made by citation to the years of the particular act.

remainder, the court stated "our lack of jurisdiction to partition jointly-held lands [Joint-Use Area], preclude[s] a complete resolution of the Hopi-Navajo controversy." Id. at 192.

Continuing disputes over the Joint-Use Area resulted in passage of the Act of December 22, 1974, 88 Stat. 1712. Therein, Congress provided for appointment of a mediator to assist in the negotiations for settlement and partition of the rights and interests of the parties to the jointly-held lands. Failing settlement, Congress authorized the U. S. District Court for the District of Arizona to make a final partition of that area. It also created the Navajo and Hopi Indian Relocation Commission (Commission) to facilitate any relocation program directed by the court.

A voluntary settlement could not be reached, and the mediator submitted a report to the district court for judicial partition of the Joint-Use Area. In 1979 the district court issued a final order partitioning the Joint-Use Area. Under the terms of section 13 of the 1974 Act, 25 U.S.C. § 640d-12, the Commission was required, within 24 months of the district court's partitioning, to submit to Congress a relocation plan for the relocation of tribe members found to be residing on the lands partitioned to the other tribe. Such relocation was to be completed within 5 years after the effective date of the relocation plan. 25 U.S.C. § 640d-13.

Hardship to Navajos required to relocate from Hopi Tribe partitioned lands precipitated the 1980 Act, 94 Stat. 929. Therein, Congress amended section 11 of the 1974 Act, 25 U.S.C. § 640d-10, to authorize and direct the Secretary to transfer up to 250,000 acres of BLM lands in Arizona and New Mexico to the Navajo Tribe, without payment by the Tribe, and to further authorize and direct the Secretary, in order to facilitate such a transfer, to acquire lands for transfer to the Navajo by exchanging lands under BLM jurisdiction for State or private lands. 25 U.S.C. § 640d-10(a)(1) (1982). 4/ In addition, the same section authorized the Secretary to accept title to up to 150,000 acres of private land acquired by the Navajo Tribe. Congress provided the Navajo Tribe 3 years from July 8, 1980, in which to select lands to be transferred or acquired. Thereafter, selections were to be made by the Commission. 25 U.S.C. § 640d-10(c) (1982). Shortly before this deadline, the Navajo Tribe selected the lands involved in this appeal.

On April 5, 1984, BLM had published in the Federal Register "Notice of Selection of Public Lands by Private Landowners to be Exchanged for Private Lands for the Navajo Tribe for Relocation Purposes." 49 FR 13596-97 (Apr. 5, 1984); Appellant's Statement of Reasons in IBLA 85-584 (SOR), Exh. 4. 5/ This notice described the public lands in which the private owners had expressed

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4/ The 1974 Act had authorized the transfer of up to 250,000 acres of BLM land in Arizona and New Mexico to the Navajo Tribe, provided it paid fair market value for the land.

5/ Appellant's Exhibits 1-12 appear in an appendix to its "Opposition to BLM's Motion for Order Giving Decisions Full Force and Effect," dated May 28, 1985, in IBLA 85-584. Those exhibits are also referenced by appellant in its SOR.

interest. The notice did not identify the private lands which had been selected by the Navajo Tribe. However, the record indicates that by letter dated August 22, 1983, the Navajo Tribe informed appellant of the selection and identified the selected ranches. BLM Answer in IBLA 85-584 (Answer), Exh. E. Appellant, by letter to BLM dated October 26, 1984, proposed an exchange of its mineral interests underlying those private lands selected by the Navajo Tribe for Federal mineral interests. SOR, Exh. 2. The BLM Phoenix District Manager rejected this proposal in a letter to appellant dated December 19, 1984, declaring that such an exchange would not be in the public interest. SOR, Exh. 3. Previously, in early November 1984, BLM had completed the Wallace Ranch exchange. Answer, Exh. F. In further response to appellant's exchange proposal, the BLM State Director on January 23, 1985, explained "[S]ince the Relocation Act is specifically intended to provide land for occupancy, there would be no advantage for the United States to acquire any of the privately held mineral estate." SOR, Exh. 14.

By letter dated February 27, 1985, appellant protested the Wallace Ranch exchange. Answer, Exh. G. By separate letter of the same date, appellant protested the proposed exchanges of the Kelsey and Roberts Ranches. Answer, Exh. H. On March 25, 1985, BLM denied these protests and appellant filed its appeal docketed as IBLA 85-584.

Appellant, by letter of June 5, 1985, protested the proposed Spurlock Ranch exchange. Answer, Exh. N. On July 1, 1985, BLM denied the protest. Answer, Exh. O. The following day BLM entered into an exchange agreement for the Spurlock Ranch. Answer, Exh. P. Santa Fe filed a timely appeal of the BLM decision.

In its SOR at page 3 Santa Fe sets out the issues raised by its IBLA 85-584 appeal as follows:

> (1) Does the Relocation Act authorize the BLM to acquire only privately owned surface estates for the purpose of relocating displaced Navajos, or must it acquire the full fee interests?
>
> (2) Do FLPMA's [Federal Land Policy and Management Act] substantive restrictions on interstate exchanges apply to the exchanges authorized under the Relocation Act?
>
> (3) Do the procedural regulations under FLPMA governing land exchanges apply to the exchanges authorized under the Relocation Act?
>
> (4) May Santa Fe's reserved mineral interests be placed under the sovereignty of the Navajo Tribe without affording Santa Fe a due process hearing?

Similar issues arise in the Spurlock Ranch appeal (IBLA 85-776), except it does not involve an interstate exchange.

Preliminary Issues

[1] Before we address these questions, we will consider two preliminary issues raised by BLM in its Answer. First, BLM claims that Santa Fe's appeal of the denial of its protest to the Wallace Ranch exchange "should be denied as untimely." 6/ BLM argues that Santa Fe's protest to the Wallace Ranch exchange was untimely because a "protest" is an objection to any action proposed to be taken, citing Goldie Skodras, 72 IBLA 120 (1983). BLM is correct in its assertion that a protest is an objection to any action proposed to be taken. See 43 CFR 4.450. In this case the Wallace Ranch exchange took place in November 1984. Santa Fe did not file its "protest" until February 1985. If the date of the Wallace Ranch exchange is considered to be the "action" date, Santa Fe's protest is clearly untimely. However, we do not believe that the exchange date is the critical date in this case. Prior to that date Santa Fe had proposed a mineral exchange to BLM. In December 1984 and in January 1985 it received responses from the BLM Phoenix District Manager and the BLM Arizona State Director, respectively, expressing BLM's unwillingness to entertain such a proposal. Santa Fe's "protest" was filed within 30 days of receipt of the State Director's response. BLM did not dismiss the "protest" as untimely, rather it addressed the merits of that "protest" along with the merits of the proposed Kelsey and Roberts Ranch exchanges.

The Board has indicated that the style of a document is not controlling, and under certain circumstances a "protest" is properly treated as an appeal. Goldie Skodras, supra at 122. Had BLM treated Santa Fe's "protest" as an appeal of the State Director's letter, the Wallace Ranch exchange would have been properly before the Board. Or if BLM had denied the "protest" as untimely, Santa Fe would have had the opportunity to appeal. However, BLM entertained the "protest" on the merits, and it now argues the protest was untimely, and the appeal from its denial "is without merit." Answer at 4.

In essence what we have in this case is BLM's failure to act on Santa Fe's request for acquisition of its mineral interest prior to completing the Wallace exchange. Subsequent thereto, BLM denied Santa Fe's request and Santa Fe filed a "protest." That "protest" should have been treated as an appeal by BLM and the case file transferred to the Board. BLM's failure to take the proper action cannot now be turned on Santa Fe to preclude it from receiving Board review. Santa Fe's appeal from BLM's substantive denial of its "protest" was timely filed. We will consider the merits of the Wallace Ranch exchange appeal.

The second issue raised by BLM is that the Board lacks jurisdiction to consider the merits of Santa Fe's appeal of the Wallace, Kelsey, and Roberts

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6/ Although BLM makes this statement, its arguments do not directly relate to the timeliness of the appeal. Rather, it argues the protest was untimely and "[t]hus Santa Fe's appeal from BLM's denial of the protest is without merit" (Answer at 4).

Ranch exchanges and to grant the relief requested by Santa Fe. 7/ In its SOR at 30 Santa Fe stated that if BLM failed to take certain actions, "BLM should be directed to rescind the exchanges." BLM states the exchanges of the Wallace, Kelsey, and Roberts Ranches have been completed and that the United States has taken title to the surface estates of those ranches in trust for the Navajo Tribe. Completion of those transactions, BLM argues, divested the Board of jurisdiction to consider the appropriateness of those exchanges and to enter orders to rescind them. Answer at 5.

As recounted by Santa Fe, this position by BLM does not reflect BLM's stance prior to the Secretary's June 7, 1985, order allowing the Kelsey and Roberts exchanges to be completed. At that time, BLM had represented to the Board in its motion to give full force and effect to its decision that "Santa Fe's interests will not be impaired by the acquisition of the lands in question." Brief in Support of the Motion at 2. Likewise, Santa Fe points out that BLM made similar representations to the Secretary in its June 5 request that he take jurisdiction of the appeals. SOR, Exh. 22. Santa Fe argues that BLM's present position contradicts the express statement of the Secretary in his order that the legal issues were referred back "to the IBLA for a ruling on the merits." Answer, Exh. L. Moreover, Santa Fe argues that it was persuaded not to seek injunctive relief to halt the exchanges because of representations made to it and because of the Secretary's statement. 8/ Santa Fe characterizes BLM's argument as "to put it mildly, disingenuous." Reply of Santa Fe to BLM's Answer in IBLA 85-584 (Reply) at 5.

We find completion of the exchanges does not deprive the Board of jurisdiction to determine the legal issues raised by Santa Fe's appeals. Both the Secretary in his order in IBLA 85-584 and the Acting Director of the Office

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7/ BLM has incorporated this and other arguments in its IBLA 85-584 answer by reference thereto in its Spurlock Ranch exchange answer (IBLA 85-776), filed Aug. 7, 1985.

8/ In its response to BLM's request that the Secretary take jurisdiction of the appeals, Santa Fe expressly stated in a June 6, 1985, letter to the Secretary:

> "Santa Fe's sole interest in previously opposing the BLM's request was to assure that a decision on the merits of its appeal not be prejudiced. That remains our principal concern. Consequently, if the affected private surface owners are willing to assume the risks inherent in going forward with transactions which appear to have serious legal deficiencies, Santa Fe would be prepared to not seek judicial review of your decision, provided that (1) you permit the IBLA to decide the appeals on the merits, (2) the status quo is maintained on the surface of the lands acquired by the BLM pending a final decision on the merits, i.e., no relocation or construction activities be permitted, and (3) the fact that the transactions were permitted to go forward not be argued by the BLM as an equitable ground for sustaining the BLM decisions on the merits."
> (Emphasis in original.)

of Hearings and Appeals in the IBLA 85-776 order directed the Board to determine the legal issues presented by the appeals. The matter of relief, if appropriate, need not be addressed at this stage of our decision.

Relocation Act

We will now examine the substantive issues presented by these appeals. ✓ First, Santa Fe argues that surface-only exchanges violate the Relocation Act. It is Santa Fe's position that the Relocation Act does not authorize the Secretary, in exchanging BLM land for private lands for transfer to the Navajo Tribe, pursuant to 25 U.S.C. § 640d-10(a)(1), to exchange and transfer surface-only interests. Santa Fe asserts its position is consistent with the objective of the Relocation Act, i.e., to facilitate the relocation of Navajo Tribe members from the Joint-Use Area. As owner of the mineral estate underlying the ranches involved in the exchanges, Santa Fe points out it has the legal right to utilize the surface of those lands to the extent necessary to develop its mineral interest. Thus, Santa Fe claims the purpose of relocation could be completely frustrated if, after relocation, Navajo Tribe members were forced to move again because of mineral development. Its interpretation, Santa Fe argues, is supported by 25 U.S.C. § 640d-12(c)(2) (1982), which provides the relocation plan developed by the Commission shall avoid or minimize adverse social, economic, cultural, and other impacts of relocation. Failure to include the mineral estate in the exchanges, Santa Fe asserts, ignores the Congressional direction to minimize impacts.

Santa Fe argues further support for its position is found in the interrelationship of the various provisions of the Relocation Act. Under 25 U.S.C. § 640d-10(a)(2) (1982), the Secretary is authorized to accept title on behalf of the United States in not to exceed 150,000 acres of private lands acquired by the Navajo Tribe (subsection (a)(2) lands). Congress provided that for a period of 3 years the Secretary could only accept title to land where both the surface and subsurface interest had been acquired, unless the subsurface owner consented to the surface-only acceptance. 25 U.S.C. § 640d-10(f)(1) (1982). Congress further provided that where there was a surface-only acquisition, the right of the mineral owner to develop his interest would not be impaired. 25 U.S.C. § 640d-10(f)(3) (1982). Santa Fe argues this protective provision does not extend to subsection (a)(1) lands which are involved in this case. Santa Fe's conclusion is that the 3-year restriction on surface-only acquisition by the Navajo Tribe and the special protection afforded where surface-only estates are subsequently accepted

> make sense only on the assumption that Congress did not intend that the BLM could exercise its exchange authority to acquire surface-only estates under subsection (a)(1). Congress obviously did not intend that BLM would act as a "middleman" to transfer split estates to the Navajos, achieving indirectly what the Tribe could not do directly.

(SOR at 17).

Santa Fe finds additional support in an October 31, 1979, memorandum from the Solicitor to the Director, BLM, which, it asserts, interprets section 11 of the 1974 Act, 25 U.S.C. § 640d-10 (1976), as requiring the transfer of the minerals in any BLM lands selected by the Navajo Tribe (SOR, Exh. 20). BLM Instruction Memorandum 80-51 (Nov. 23, 1979) informed the Arizona and New Mexico State Directors that "any selection under Sec. 11 is to be considered as a request for full fee conveyance without regard to the mineral character of the land." SOR, Exh. 21. Santa Fe argues the Solicitor's memorandum was issued at a time when Congress was considering the 1980 Act which resulted in the broadening of the Secretary's responsibility and authority under section 11 to include the use of exchanges. Santa Fe believes the Solicitor's construction of the 1974 Relocation Act provides further justification for its position.

Finally, Santa Fe charges the 1984 amendment of the 1974 and 1980 Acts by section 106 of the San Juan Wilderness Protection Act, 98 Stat. 3155, confirmed the Solicitor's interpretation. That section provides that in transfers under 25 U.S.C. § 640d-10(a)(1), BLM shall convey "all rights, title and interests of the United States in the lands * * *." Santa Fe alleges because Congress made it clear that the Navajo Tribe was to receive the minerals in lands already under BLM jurisdiction, it follows Congress intended lands acquired by BLM for the Navajos by exchange to include mineral interests.

In response BLM argues the Relocation Act does not require the acquisition of Santa Fe's mineral interest. Santa Fe's claims of possible disruption of the relocatees is characterized by BLM as merely speculation. BLM asserts there is no evidence the mineral estate has value, and, even if it does, there is nothing to indicate it could be removed and marketed at a profit. Assuming development were to take place, BLM states, the Government and the Navajo Tribe can deal with it at that time. BLM further claims Santa Fe's theory of possible disruption "assumes the Government and the Navajo Tribe will be powerless to control the damage that may result from mining." Answer at 32. In addition, BLM claims that although the Secretary is authorized to facilitate the land acquisition process, Congress placed specific restraints on that authority. BLM states the Secretary cannot require the mineral estate owner to sell or exchange its interest, nor can that interest be condemned by the Government.

BLM disagrees with Santa Fe's interpretation that the interrelationship of provisions of the Relocation Act support Santa Fe's position. An analysis of those provisions, BLM asserts, leads to the conclusion that there is no requirement that BLM acquire Santa Fe's subsurface rights in the lands in question.

BLM contends the October 31, 1979, Solicitor's memorandum and the 1984 amendment to the Relocation Act, rather than supporting Santa Fe's position, in fact, supports its position. The memorandum, BLM asserts, recognized when private, rather than BLM, lands were acquired by the Navajo Tribe under the Relocation Act, surface-only acquisitions were possible, depending on the

interest acquired. The 1984 amendment, BLM contends, "was intended to transfer the Government's interests in the 35,000 acres of BLM lands in the Paragon Resources Ranch in New Mexico that the Navajo Tribe had previously selected" and the transfer was made "subject to existing leasehold interests." Answer at 39. BLM argues that this shows that Congress intended to transfer only the rights of the United States in the subject land and did not require the acquisition of third-party rights for transfer to the Navajo Tribe.

A determination of whether the exchanges in question violate the Relocation Act requires an analysis of the relevant provisions of that Act. Section 11 of the Act of December 22, 1974, 88 Stat. 1712, 1716, 25 U.S.C. § 640d-10 provided:

> Sec. 11. (a) The Secretary is authorized and directed to transfer not to exceed 250,000 acres of lands under the jurisdiction of the Bureau of Land Management within the States of Arizona or New Mexico to the Navajo Tribe: Provided, That the Navajo Tribe shall pay to the United States the fair market value for such lands as may be determined by the Secretary. Such lands shall, if possible, be contiguous or adjacent to the existing Navajo Reservation. Title to such lands which are contiguous or adjacent to the Navajo Reservation shall be taken by the United States in trust for the benefit of the Navajo Tribe.
>
> (b) Any private lands the Navajo Tribe acquires which are contiguous or adjacent to the Navajo Reservation may be taken by the United States in trust for the benefit of the Navajo Tribe: Provided, That the land acquired pursuant to subsection (a) and this subsection shall not exceed a total of 250,000 acres. [Emphasis in original.]

Thus, the 1974 Act authorized the Navajo Tribe to purchase not to exceed 250,000 acres of BLM land within the States of Arizona or New Mexico and acquire private lands contiguous or adjacent to the Navajo Reservation, provided the total lands purchased and acquired did not exceed a total of 250,000 acres. Title of land contiguous or adjacent to the Navajo Reservation, whether purchased from the United States or acquired from private parties, was to be taken by the United States in trust for the benefit of the Navajo Tribe.

In 1980 Congress enacted the Navajo and Hopi Relocation Amendments Act, 94 Stat. 929-36, section 4 of which amended 25 U.S.C. § 640d-10 to authorize the Secretary to transfer up to 250,000 acres of BLM lands within the States of Arizona and New Mexico to the Navajo Tribe without cost to the Tribe, title to be held by the United States in trust for the benefit of the Tribe. In order to facilitate that transfer Congress authorized the Secretary to exchange such lands for State or private lands. 25 U.S.C. § 640d-10(a)(1) (1982). And the same section also authorized the Secretary to accept title in trust for the benefit of the Navajo Tribe of up to 150,000 acres of private lands acquired by the Navajo Tribe. 25 U.S.C. § 640d-10(a)(2). Congress further stated that the boundary of any parcel of land transferred or acquired pursuant to such authority must be within 18 miles of the "present boundary" of the Navajo Reservation, provided, subject to a limitation, that BLM lands anywhere within Arizona and New Mexico could be used for the purpose of exchanging for lands within 18 miles of the boundary of the reservation. 25 U.S.C. § 640d-10(b).

Selection of lands to be transferred or acquired for a period of 3 years after July 8, 1980, was to be made by the Navajo Tribe after consultation with the Commission and, thereafter, to be selected by the Commission after consultation with the Navajo Tribe. 25 U.S.C. § 640d-10(c). No more than 35,000 acres of the lands transferred or acquired were to be within the State of New Mexico. Id.

The October 30, 1984, amendment to 25 U.S.C. § 640d-10(a)(1), incorporated in section 106 of the San Juan Basin Wilderness Protection Act of 1984, 98 Stat. 3157, provided, inter alia, that "all the rights, title, and interests of the United States" in the lands described in 25 U.S.C. § 640d-10(a)(1), including lessor interests under the Mineral Leasing Act of 1920, "subject to existing leasehold interests" would be transferred without cost to the Navajo Tribe.

The transactions in this case do not fall squarely within any of the transfer-acquisition sections of the Relocation Act, although they clearly were not 25 U.S.C. § 640d-10(a)(2) actions. BLM characterizes them as "reverse exchanges." It states the Navajo Tribe, rather than selecting BLM land, identified private lands it desired for addition to its reservation. Private parties then identified BLM lands in Arizona and New Mexico for which they would trade the lands selected by the Navajo Tribe. Counsel for BLM explains further:

> The BLM exercised the Commission's authority to select BLM lands for the Navajo Tribe after July 8, 1983, see Section 4 of the Amendments Act amending Section 11 of the Settlement Act (94 Stat. at 931), and selected for the Commission the Navajo Tribe's entitlement under the 1974 Settlement Act to BLM lands in order to acquire the private ranches the Navajo Tribe selected. After it made the BLM selections for the Commission, BLM, pursuant to the authority granted in Section 11(a)(1) of the Settlement Act, added by Section 4 of the 1980 Amendments, 94 Stat. at p. 930, traded the selected BLM lands to the private third parties for the private ranches the Navajo Tribe designated in its June 30, 1983 selection. Exhibit BB is the affidavit of the Chairman of the Commission. The Commission Chairman's affidavit establishes that the Arizona State Director acted as the agent of the Commission in selecting the BLM lands that were thereafter exchanged for the private ranches and ratifies those selections.
>
> In summary, the foregoing demonstrates the practical need of the Navajo Tribe to select the private land that it desired to

> be added to its existing Reservation. It is also apparent that the BLM, in order to assist the Commission, became the Commission's alter ego in selecting the BLM lands to be exchanged for the private ranches the Tribe had identified. However, it is also clear that, in selecting the BLM lands to be exchanged for the private ranches selected, the BLM was acting for and under the authority of the Commission.

Answer at 23-24; see also Answer at 16-17; 28-29.

Santa Fe describes BLM's "reverse exchange" theory as "post hoc rationalization" (Reply at 8). It argues that, whatever the characterization, BLM's action in failing to acquire Santa Fe's mineral interest violates the basic purpose of the Relocation Act.

No particular section of the Relocation Act expressly requires acquisition of Santa Fe's mineral interest, nor does Santa Fe argue that there is a specific section which does. Santa Fe's arguments focus on what it considers to be the intent and purpose of the Relocation Act.

[2] Notwithstanding the intent and purpose of the Act, we find no legal requirement therein that BLM acquire Santa Fe's mineral interests. Clearly, the intent of the Relocation Act is to effect a permanent solution to the Navajo-Hopi land dispute by relocating Navajo Tribe members on lands transferred or acquired under the Relocation Act. That those members might be disturbed in their use of that land by possible future mineral operations by Santa Fe is troublesome, but does not impose a legal obligation on the Secretary to acquire that interest at this time. In that regard we must agree with counsel for BLM that should potential disruption pose a problem in the future, the Secretary and the Navajo Tribe can address it at that time. Santa Fe's concern about being subjected to developmental constraints by the Navajo Tribe is understandable since it is, in fact, in competition with the Navajo Tribe in the field of mineral development. Answer, Exh. G at 6. Again, however, that concern does not translate into a legal requirement that the Secretary acquire the mineral interest as part of his duties under the Relocation Act.

We must also reject Santa Fe's argument regarding the significance of the restriction in section 11(f)(1) of the Relocation Act, 25 U.S.C. § 640d-10(f)(1) (1982), on Secretarial acceptance of surface-estate acquisitions by the Navajo Tribe under section 11(a)(2). Section 11(f)(1) provided that for 3 years following July 8, 1980, the Secretary could not accept title to lands under section 11(a)(2) unless both surface and subsurface estates were acquired or the subsurface owner consented to a surface-only transfer. Santa Fe argues that section 11(f)(1), although only addressing section 11(a)(2) lands, shows that Congress did not intend that BLM use its exchange authority to acquire surface-only estates. Santa Fe contends such a conclusion is bolstered by the failure of Congress to give the Secretary condemnation authority. Those actions, Santa Fe asserts, show strong concern that private property owners not have their property taken against their will. 9/

We cannot attribute to Congress what it has not stated. While section 11(f)(1) represents a restriction on surface-estate-only section 11(a)(2) acquisitions, that restriction does not specifically apply to section 11(a)(1) actions, and even if it did, the 3-year full-fee restriction expired in July 1983. Moreover, the pitfall of Santa Fe's position is illustrated by the following example. Suppose ABC Corporation, rather than Santa Fe, owned the mineral rights involved herein. According to Santa Fe, BLM would be required to acquire those rights for the Navajo Tribe. However, assume, for whatever reason, that ABC Corporation did not want to transfer its mineral rights by exchange, or otherwise. Since Congress has not given the Secretary condemnation authority, the purpose of the Relocation Act would be frustrated because of the refusal of the subsurface owner to agree to a transfer. Congress could not have intended such a result. Thus, we cannot accept the interpretation of the Relocation Act urged by Santa Fe which could have the potential of precluding relocation.

The significance of the Solicitor's memorandum, supra, from Santa Fe's standpoint is that it recognized the Navajo Tribe was entitled to the entire Federal interest in selected BLM lands under the 1974 Act. Santa Fe argues that if the Navajo Tribe now selects private land under the 1980 Act to be exchanged for BLM land (i.e., BLM's reverse exchange), the only reasonable construction is that full-fee interest in the private lands must be acquired and conveyed to the Navajo Tribe. Counsel for BLM argues the Solicitor's memorandum is inapplicable because note 1 of that opinion provides:

> 1/ If private lands are acquired and the lands are adjacent or contiguous to the Reservation, there would be a transfer of the legal title to the United States of whatever interests, surface and/or subsurface, the Tribe acquired. But the issue under consideration does not arise in the instance of private lands acquisition because that involves a transfer of interests to the United States, not from the United States. [Emphasis in original.]

SOR Exh. 20 at 3.

We disagree with Santa Fe. Full-fee acquisition is not the only reasonable interpretation. We find nothing in that memorandum that would require full-fee acquisition in situations such as those presented herein.

9/ Santa Fe notes that section 11(f)(2) provided for a 1983 report by the Commission to Congress which, according to Santa Fe, would have allowed Congress to determine whether the full-fee acquisition requirement had impeded section 11(a)(2) actions. Santa Fe states that report was never made. The statute is clear, however, that the full-fee restriction was only to last 3 years. As stated in H. R. Rep. No. 1094, 96th Cong., 2nd Sess. 13

Likewise, the 1984 amendment was intended to require transfer of all rights, title, and interests of the United States. That amendment relates to Government, not private land, however. Thus, it is not directly applicable where the United States is acquiring private lands through exchange. In addition, that amendment would appear to require the transfer of only those interests owned by the United States. Therefore, if the United States held only the surface interest in certain lands, it is not clear that the amendment would require the United States to acquire the subsurface to comply with the amendment.

Santa Fe further argues that BLM's "reverse exchange" violates the restriction in section 11(c), 25 U.S.C. § 640d-10(c) (1982), which provides that "not to exceed thirty-five thousand acres of land so transferred or acquired [for the benefit of the Tribe] shall be selected within the State of New Mexico." Santa Fe states:

> Since the Tribe has already directly selected 35,000 acres of BLM lands in the Paragon Resources Ranch in New Mexico (BLM Ans. 15; BLM Exhs. T and W), the 55,480 acres of BLM lands selected in New Mexico under the Kelsey and Roberts exchanges (BLM Ans. 2) clearly exceed that statutory ceiling on transfers of BLM lands in New Mexico.

Reply at 13.

The New Mexico limitation relates to lands actually being transferred or acquired for the benefit of the Navajo Tribe. Thus, it was restricted to 35,000 acres in New Mexico. It reached this limitation with the Paragon Resources Ranch selection. Herein, the Navajo Tribe selected private land in Arizona. Substantial BLM acreage in New Mexico was exchanged for certain of the Arizona lands; however, title to the New Mexico land was acquired by private parties, not the Navajo Tribe. The New Mexico limitation established the maximum acreage available for relocation of Navajo Tribe members in that state. That limitation has not been exceeded in this case. Thus, there has been no violation.

Interstate Exchanges

We turn now to Santa Fe's argument that the exchanges involving the Kelsey and Roberts Ranches violate section 206(b) of FLPMA, 43 U.S.C. § 1716(b) (1982), which prohibits the Secretary from making interstate exchanges. 10/ This prohibition is violated, Santa Fe asserts, because

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fn. 9 (continued)
(1980), "The managers intend that affirmative congressional action will have to be taken to continue the [full-fee] restriction beyond the 3 years." Answer, Exh. DD. No such action has been taken.

10/ Section 206(b) reads in pertinent part:
"In exercising the exchange authority granted by subsection (a) of this

those exchanges involve the transfer of BLM lands in New Mexico for Kelsey and Roberts Ranch lands in Arizona. Santa Fe believes the Relocation Act contains no independent exchange authority and, therefore, exchanges occurring thereunder are governed by FLPMA exchange requirements. In support of this argument Santa Fe points to various Congressional documents relating to the 1980 Act and to section 28(b) of the Relocation Act, 25 U.S.C. § 640-26(b) (1982), which reads: "Any transfer of public lands pursuant to this subchapter shall be made notwithstanding the provisions of sections 1782 [section 603 relating to wilderness study] and 1752(g) [section 402(g) requiring notice and compensation to grazing permittees and lessees] of Title 43."

The legislative history cited by Santa Fe includes a memorandum dated June 10, 1980, from Representative Morris K. Udall, Chairman of the Conference Committee and Chairman of the House Committee on Interior and Insular Affairs, and Senator John Melcher, Chairman of the Senate Select Committee on Indian Affairs, to all Senate and House Conferees on S. 751 offering certain changes including:

> The exchange authority of the bill would be changed, at the suggestion of the BLM representatives, to conform to the exchange authority of the Federal Land Policy and Management Act.
>
> The provision of the bill exempting action under the Act from the provisions of section 603 of FLPMA would be expanded to include section 402(g). Section 402(g) requires a two year notice, under certain circumstances, before BLM lands can be exchanged for other lands.

SOR, Exh. 8 at 2.

In addition, Santa Fe points out that the Senate passed S. 751 on October 24, 1979, and that bill provided no exemption for FLPMA, while the House version of S. 751, passed October 29, 1979, stated that transfers should be made notwithstanding any provision of FLPMA.

In a letter to Chairman Udall, dated January 9, 1980, Assistant Secretary of the Interior Larry E. Meierotto stated:

> The new section 28, which section 12 of the House bill would add to the 1974 Act, would, in part, permit any transfer of public land pursuant to the 1974 Act despite any requirements of the

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fn. 10 (continued)
section or by section 1715(a) of this title, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired."
(Emphasis added.)

> Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.). In view of the unique circumstances involved in the settlement of the Navajo-Hopi dispute--the longstanding nature of the dispute and congressional efforts at its solution, the imperatives of the Secretary's trust responsibilities, and the statutory requirement for completion of relocation planning by April 1981--we would not object to this provision if it is narrowed as suggested below. Conveyance of public land under section 11(a) of the 1974 Act, a practical prerequisite to completion of relocation planning, would be nevertheless subjected to careful consideration with the policies underlying FLPMA in mind.
>
> The exemption from the specific procedural requirements of FLPMA would enable timely integration of the sites into the relocation planning process. Although we do not object to the FLPMA exemption, as we understand its intent, we believe it is too broad. It is our belief that only section 603 of FLPMA, containing the wilderness study mandate, imposes procedural requirements that are inconsistent with the timing of the relocation planning process. Thus, the FLPMA exemption in subsection (b) of proposed section 28 should be limited to only section 603 of FLPMA.

SOR, Exh. 10 at 8.

In an undated letter to Chairman Udall the legislative counsel for the Department of the Interior, John Powell, recommended exempting the 1980 Act from five sections of FLPMA, including section 206. As enacted by Congress, the 1980 Act exempted only two sections, section 603 and section 402(g).

Santa Fe argues the statutory language and the Congressional documents evidence a clear Congressional intent to apply FLPMA exchange requirements to exchanges occurring under the relocation program. The principal reason for such an interpretation, Santa Fe claims, is that consideration was given to exempting actions under the relocation program from section 206 of FLPMA, but ultimately only two specific sections of FLPMA were included in the exempting language. Santa Fe asserts the only logical conclusion is section 206 of FLPMA applies and the Kelsey and Roberts interstate exchanges are prohibited.

In its decision responding to Santa Fe's protest of the Kelsey and Roberts exchanges, BLM cited 25 U.S.C. § 640d-10(b) (1982) as authority for interstate exchanges. That section does not authorize interstate exchanges, Santa Fe argues, it merely provides that "if the Navajos select private lands in New Mexico, BLM land anywhere in New Mexico can be used to exchange for it, and likewise if the Navajos select private land in Arizona, BLM land anywhere in Arizona can be used in an exchange." SOR at 23-24. This interpretation makes sense, Santa Fe contends, because section 206 of FLPMA is applicable and if Congress wanted the Secretary to have the authority to make interstate exchanges, it would have specifically granted that authority.

BLM responds that Santa Fe is mistaken about the applicability of section 206 of FLPMA. BLM resorts to an analysis of the 1974 Act and the 1980 Act to support its argument. BLM argues that the 1974 Act gave the Navajo Tribe a substantive right to 250,000 acres of BLM land in Arizona and New Mexico, and since that Act predates FLPMA, FLPMA does not apply.

BLM further argues the Relocation Act imposes a special duty, while section 206 of FLPMA establishes a general duty regarding land exchanges. Under those circumstances BLM contends any conflict should be construed in favor of the special statute, even if it was passed prior to the general one, citing 2A Sutherland, Statutory Construction § 51.05 (4th ed. 1984). Moreover, BLM asserts a statute passed for the benefit of Indians is to be construed in a light favorable to its beneficiaries, citing Bryan v. Itasca County, 426 U.S. 373 (1976) and Northern Cheyenne Tribe v. Hollowbreast, 425 U.S. 649 (1976).

With regard to Santa Fe's argument relating to Congressional intent, BLM argues the legislative history is equivocal on the intent but that "the best piece of legislative history indicates Congress did not intend to make FLPMA applicable." Answer at 53. It is just as likely, BLM asserts, Congress intended, by use of the "nothwithstanding" language in section 28(b), that FLPMA did not apply to transfers or exchange under the relocation program. 11/

[3] After reviewing the arguments presented we must reject BLM's contention that the 1974 Act confirmed a right on the Navajo Tribe to 250,000 acres of BLM land which must be considered a valid existing right under FLPMA. Santa Fe correctly points out that under the 1974 Act the Navajo Tribe was entitled to purchase 250,000 acres, while under the 1980 Act the Secretary was directed to transfer the same amount of acreage without charge. In addition, the 1980 Act authorized the use of exchange by the Secretary to effectuate such transfer. We agree with Santa Fe that the entitlement created by the 1974 Act was substantially changed by the 1980 Act. Thus, the question of the applicability of section 206 of FLPMA is not dependent on the chronological sequence of the 1974 Act and FLPMA.

Likewise, we reject BLM's argument that the "best piece of legislative history" of the 1980 Act indicates Congress did not intend to make section 206 of FLPMA applicable. The legislative history relied upon by BLM is the statement by Congressman Marriott quoted supra at note 11. Even that statement, however, supports the conclusion that section 206 is applicable. There would be no reason to except provisions of FLPMA from application if none

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11/ In support of this argument BLM cites June 25, 1980, remarks on the Conference Report of the 1980 Act by Congressman Dan Marriott, one of the Joint Conference Committee managers. He stated: "Exemptions from NEPA [National Environmental Policy Act] and FLPMA are included in Section 11 to avoid any possibility that those two acts would be raised to obstruct relocation or the reclamation of the lands in question". Answer Exh. EE.

applied in the first place. The Marriott statement is interesting, however, in light of the fact that only two provisions of FLPMA were specifically excepted. It could be that Congress believed only those two sections possibly could be raised to frustrate relocation.

We conclude section 206 of FLPMA is applicable to exchanges under 25 U.S.C. § 640d-10. Despite that conclusion, Santa Fe's objection that the Kelsey and Roberts exchanges were therefore prohibited must be rejected.

The basis for that ruling is section 11(b), 25 U.S.C. § 640d-10(b) (1982), which reads:

> A border of any parcel of land so transferred or acquired shall be within eighteen miles of the present boundary of the Navajo Reservation: Provided, That, except as limited by subsection (g) of this section, Bureau of Land Management lands anywhere within the States of Arizona and New Mexico may be used for the purpose of exchanging for lands within eighteen miles of the present boundary of the reservation.

We find the general prohibition against interstate exchanges found in section 206 of FLPMA is inapplicable because of the above-quoted language. Santa Fe's argument that such language only authorizes intrastate exchanges is negated by its clear wording. In order to insure the contiguity of the Navajo Reservation, Congress established that a border of any parcel of land transferred or acquired under section 11(a) should be within 18 miles of the present boundary of the Navajo Reservation. Congress then provided that BLM lands "anywhere" within the States of Arizona and New Mexico could be used for the purpose of exchanging for lands within 18 miles of the present boundary. That specific language must be read as an exception to the general prohibition in section 206 of FLPMA against interstate exchanges. See 2A Sutherland, Statutory Construction § 51.05 (4th ed. 1984).

Congress was concerned with providing flexibility in the exchange program in order to allow BLM to accomplish the purpose of the relocation program to provide lands within a specific geographic location for resettlement. That BLM land in New Mexico might be designated for exchanging for lands within that area clearly was contemplated by Congress. Thus, the interstate exchange prohibition of section 206 of FLPMA does not apply to the Kelsey and Roberts exchanges.

Exchange Regulations at 43 CFR Subpart 2200

[4] Santa Fe next complains the Wallace exchange violated the regulations in 43 CFR Subpart 2200 which implement section 206 of FLPMA. Santa Fe cites 43 CFR 2200.1(c) and 43 CFR 2201.1, arguing that BLM failed to comply

with mandatory requirements pertaining to the notice of realty action. [12] Specifically, Santa Fe charges that notices of the Wallace exchange identified only the Federal lands to be transferred and failed to identify the private owners. It states the first two notices (Apr. 5 and May 17, 1984), provided no opportunity for public comment, advising only that inquiries concerning the segregation of lands could be directed to BLM. Santa Fe asserts that although the June 26, 1984, notice did invite "inquiries, comments and protests" regarding the land identified in that notice, all the notices were "woefully inadequate to apprise Santa Fe and the public in a timely fashion of the details of the proposed exchange and their right to comment" (SOR at 25).

The land use planning provisions of 43 CFR Subpart 1601 were also violated, Santa Fe contends, because the 43 CFR Part 2200 regulations require compliance with those provisions and BLM failed to so comply. Santa Fe argues that, rather than amending a land management plan, as required by 43 CFR 1610.5-5, BLM merely prepared an "assessment" which failed to present data and analysis necessary to make an informed decision as required by 43 CFR 1610.8(b)(1). Santa Fe complains that there was virtually no public involvement in the Wallace exchange, and the assessment was not distributed to the public for review and comment.

Santa Fe presents similar arguments regarding the Spurlock exchange. It points to section 10 of the Spurlock exchange agreement which provides:

> Also, the *United States is required to process this exchange in accordance with 25 U.S.C. 640d-10 and 25 U.S.C. 640-d-26, and 43 CFR 2200* which require certain actions on the part of the United States, such as public notice and consideration of public comments to the exchange proposal. This proposal for the exchange of lands hereunder may have to be abandoned as a result of information obtained through this procedure. (Emphasis added).

Answer (IBLA 85-776), Exh. 3. That section is evidence of BLM's intent to process relocation exchanges under FLPMA exchange procedures, which BLM failed to comply with, Santa Fe claims.

BLM's response is in the alternative. First, it asserts FLPMA exchange procedures are inapplicable because section 206 of FLPMA does not apply to these relocation exchanges. This argument is easily disposed of in that we have found that section 206 of FLPMA is applicable. Moreover, *Federal Register* notices regarding the Wallace and Spurlock exchanges, 49 FR 26153 (June 26, 1984) and 49 FR 34097 (Aug. 28, 1984), respectively, announced segregation of the lands in accordance with 43 CFR 2201.1(b) (SOR, Exh. 4, and BLM Supplemental Answer in IBLA 85-776, Exh. 1), and also the Spurlock agreement, cited above, referenced the FLPMA exchange regulations.

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[12] 43 CFR 2200.1(c) provides:
"(c) A determination that lands have been found suitable for disposal by exchange shall be evidenced by the issuance of a notice of realty action. The notice of realty action shall contain: (1) A description of both the Federal and non-Federal lands proposed to be exchanged; (2) the identity of the party(s) with whom the exchange will occur; (3) the terms and conditions of the exchange; (4) any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest; (5) the intended time of the exchange; and (6) an opportunity for public comment."

Second, BLM argues in essence that even if such procedures apply, BLM complied. There can be no question the *Federal Register* notices for the Wallace and Spurlock exchanges did not adhere to the regulation (43 CFR 2200.1(c)) governing the informational requirements for notices of realty action. Those notices failed to describe the non-Federal land proposed for exchange, although they did refer to the lands as having been selected by the Navajo Tribe. The identity of the parties to the exchange was not disclosed. The terms and conditions of the exchanges were not included, nor were public comments solicited in all notices. Even where comments were solicited, the notices did not indicate any time period for comment as set forth in 43 CFR 2201.1.

Despite those deficiencies, the record does not indicate that Santa Fe was in any way prejudiced by BLM's failure to include complete information in those notices. Santa Fe was apparently aware of the potential acquisition of the private lands overlying its mineral interests as early as August 1983, and it had sufficient opportunities to express its concerns about the exchanges. *See* Answer, Exh. I at 3. While BLM is certainly subject to criticism for failing to adhere strictly to the regulations, any inadequacies in those notices do not constitute a basis for negating the Wallace and Spurlock exchanges. BLM provided notice to the public concerning those exchanges, and Santa Fe was, in fact, cognizant of the details thereof. Under the circumstances, Santa Fe has not established a violation that would require overturning the exchanges.

The same holds true for the planning regulations. BLM explained that the public lands in the Wallace exchange were all in areas where no previous planning existed. Thus, a plan amendment was impossible. BLM did, however, prepare the "Navajo Relocation Exchange Assessment." BLM Answer, Exh. I; BLM Supplemental Answer, IBLA 85-776, Exh. 2C. BLM published notices relating to the Spurlock exchange in the *Federal Register* on three separate occasions, and it also provided a plan amendment for those lands. Supplemental Answer, IBLA 85-776, Exh. 2.

Denial of Due Process

Santa Fe's final argument is that it has been denied due process because its mineral interests have been subjected to the jurisdiction of the Navajo Tribe without a hearing. Santa Fe alleges that it may be subject to the police powers of the Tribe which might include limitations or the complete prohibition of mineral development by Santa Fe. 13/ Santa Fe asserts it is highly likely the Navajo Tribe will attempt to exercise its sovereign power to adversely affect Santa Fe's mineral interests because the Tribe is in "aggressive competition" with Santa Fe in the area of mineral development. SOR at 28. For those reasons Santa Fe claims it should have been entitled to a hearing on the exchanges.

[5] We must reject Santa Fe's argument. Its claim of lack of due process is without merit. Due process does not require notice and a right to a prior hearing in all cases in which there is an alleged impairment of property rights so long as the person is given notice and an opportunity to be heard before the alleged impairment becomes final. Appeal to the Board of Land Appeals satisfies that requirement. Robert J. King, 72 IBLA 75, 78 (1983). Due process mandates the opportunity to be heard; Santa Fe has had that opportunity. In this case Santa Fe had an opportunity to present its objections to the exchanges to BLM. BLM considered those objections and rejected them in appealable decisions. Santa Fe sought review of those decisions before this Board. The fact that Santa Fe's claim that BLM must acquire its mineral interests has been rejected does not mean it has been denied due process. We find Santa Fe has presented no basis for concluding that the exchanges are contrary to law.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Bruce R. Harris
Bruce R. Harris
Administrative Judge

We concur:

James L. Burski
James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

13/ Santa Fe points out that the statutory protection of rights of mineral owners contained in 25 U.S.C. § 640d-10(f)(3) applies only to mineral interests underlying land purchased directly by the Navajo Tribe under 25 U.S.C. § 640d-10(a)(2), not to lands acquired by BLM through exchange under 25 U.S.C. § 640d-10(a)(1).

Santa Fe Southern Pacific Corporation

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January 30, 1986

Hon. Sidney R. Yates, Chairman
Subcommittee on Interior
Committee on Appropriations
House of Representatives
B-308 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Chairman Yates:

Santa Fe Southern Pacific Corporation respectfully requests permission for Santa Fe Pacific Railroad Company ("Santa Fe"), its subsidiary, to testify at the Subcommittee's oversight hearings on the Navajo-Hopi relocation program scheduled for Tuesday morning, February 4, 1986. Santa Fe owns some 140,000 acres of reserved mineral interests underlying approximately 176,500 acres of land comprising the Wallace, Roberts, Kelsey and Spurlock ranches in Arizona which the Bureau of Land Management ("BLM") has acquired by exchange for the purpose of relocating certain Navajo families from the so-called Navajo-Hopi Joint Use Area in Arizona. Santa Fe also owns some 100,000 acres of reserved minerals underlying the 107,000 acre Bar-N Ranch in Arizona, the surface of which is owned in fee by the Navajo Tribe and which is planned to be dedicated to relocation and made part of the Reservation at some time in the future. BLM has completed exchanges with the State of Arizona to acquire approximately 29,360 acres of State-owned surface and mineral interests within those ranches, yet in December 1984 abruptly cut off negotiations on a proposed exchange of Santa Fe's mineral interests underlying the ranches for comparable BLM mineral interests. Santa Fe was therefore forced to challenge the legality of the "surface only" exchanges as violating the Navajo-Hopi Relocation Act of 1974, as amended in 1980 (25 U.S.C. §§ 640d-640d-28, "Relocation Act") under which they were purportedly made. Santa Fe filed protests with the Arizona and New Mexico State Directors of BLM in February 1985. The protests were denied in March 1985 and Santa Fe filed its appeal with the Interior Board of Land Appeals ("IBLA") the following month.

Santa Fe has made the following contentions before the IBLA:

1) The Relocation Act does not authorize the BLM to acquire only privately owned surface estates for the purpose of relocating displaced Navajos, but rather intended the BLM to acquire full fee interests for the Tribe.

2) The exchanges violate the restrictions on interstate exchanges contained in the Federal Land Policy and Management Act of 1976 ("FLPMA"), which the Relocation Act intended would govern the exchanges authorized in 1980, as well as the Secretary's exchange regulations under FLPMA.

3) The exchanges violate the restriction in the 1980 Relocation Act amendments which provides that "not to exceed thirty-five thousand acres of land so transferred or acquired [for the benefit of the Navajo Tribe] shall be selected within the State of New Mexico". 25 U.S.C. § 640d-10(c).

4) The development potential and marketability of Santa Fe's reserved mineral interests may not lawfully be impaired by placing them under the sovereignty of the Navajo Tribe without Santa Fe's consent or affording Santa Fe a due process hearing.

Santa Fe is informed that a decision by the Board is imminent.

When Santa Fe filed its appeal with the IBLA from the BLM's decision not to carry out an exchange for Santa Fe's mineral interests underlying the Wallace, Kelsey and Roberts ranches, Santa Fe successfully argued before the Board that the surface exchanges should be stayed pending a resolution of what the Board referred to as the "substantial legal issues" raised in our appeal. However, Secretary Hodel later assumed jurisdiction over the appeal and directed that the exchanges be made effective notwithstanding the pending appeal. At that time Santa Fe was requested by BLM Director Burford and former Interior Secretary William P. Clark, President Reagan's special representative appointed to attempt to resolve the Navajo-Hopi relocation controversy, not to seek an injunction against the completion of the transactions because it might permanently impair certain exchange agreements with third parties and substantially set back the relocation program. Santa Fe agreed that it would not seek judicial relief at that time on specified conditions set forth in the attached letter of June 6, 1985 from Santa Fe's counsel to Secretary Hodel. One of the specified conditions was that "the status quo is maintained on the surface of the lands acquired by the BLM pending a final decision on the merits, i.e., no relocation or construction activities be permitted". The BLM and the Relocation Commission subsequently agreed by letter of June 20, 1985 (copy enclosed) to give Santa Fe 20 days notice prior to any "surface disturbing activities" on surface areas overlying Santa Fe's reserved minerals. Santa Fe was satisfied that such notice would give it adequate opportunity to seek judicial intervention to prevent construction of roads, houses or other facilities pending ultimate resolution of the legal issues involved in its challenge to the exchanges.

With the substantial appropriations made for Navajo-Hopi relocation purposes in recently enacted P.L. 99-190, Santa Fe believes that the Relocation Commission will probably proceed at a forced march to attempt to meet the July 1, 1986 deadline for relocation, although that effort should be moderated by the restriction in P.L. 99-190 that no relocation funds "may be used to evict any Navajo household who, as of November 30, 1985, is physically domiciled on the lands partitioned to the Hopi Tribe until such time as a new or replacement home is available for such household."

Santa Fe shares this Subcommittee's concern with the unfortunate personal circumstances surrounding the relocation program. We do not wish to prolong this process, but to aid its quick, fair and compassionate conclusion. Although Santa Fe has repeatedly made it clear to the Secretary, the BLM, the Relocation Commission, and the IBLA that it has absolutely no desire to disrupt the relocation program, Santa Fe is determined to take all necessary action to prevent its 240,000 acres of reserved mineral interests from becoming subject to the jurisdiction of the Navajo Tribe without compensation by exchange or otherwise. Consequently, Santa Fe believes that it would not be in the public interest, i.e., the interests of the Navajos, the Hopis, Santa Fe or the United States Treasury, for Congress to continue to appropriate funds for that program without careful consideration of the possible impact on the program which Santa Fe's legal challenge to the exchanges may pose.

It is our understanding that this pending dispute has not previously been brought to your attention, although it is mentioned at page 5 of the memorandum of September 20, 1985, to former Interior Secretary Clark from his special assistant, Mr. Richard C. Morris (copy enclosed). Therefore, Santa Fe respectfully requests the opportunity to have Jerome C. Muys, its Washington counsel who is handling this litigation, testify at the scheduled hearings in order to amplify on the foregoing summary of the current situation and attempt to answer any questions the Subcommittee may have.

Sincerely yours,

Gregory M. Pensabene
Assistant Vice President

BEST COPY AVAILABLE

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June 6, 1985

Honorable Donald P. Hodel
Secretary of the Interior
Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

RE: Opposition to Request for Secretary to Intervene in Santa Fe Pacific Railroad Company, IBLA 85-584

Dear Mr. Secretary:

Santa Fe Pacific Railroad Company (Santa Fe) objects to the request of the Director of the Bureau of Land Management (BLM) dated June 5, 1985, for the Secretary to assume limited jurisdiction over the captioned appeals for the purpose of overruling the Interior Board of Land Appeals' (IBLA) decision of May 31, 1985, refusing to make the challenged decisions effective pending appeal. The reasons why such action would not be in the public interest are detailed in the memorandum which Santa Fe filed with the IBLA opposing the BLM's earlier similar request and which we understand has been forwarded to you with the Director's request. We emphasize that the Board's decision acknowledged that Santa Fe had raised "substantial legal questions." In this regard, Santa Fe contends that the actions violate both the Navajo-Hopi Relocation Act and the Federal Land Policy and Management Act, not just the former, as the Director's memo states.

If you should overrule the Board on this issue, the Director has requested Santa Fe not to seek judicial review of your decision so that the closings on the Kelsey and Roberts exchanges may go forward and certain arrangements among the affected surface owners not be disrupted. Santa Fe's sole interest in previously opposing the BLM's request was to assure that a decision on the merits of its appeal not be prejudiced. That remains our principal concern. Consequently, if the affected private surface owners are willing to assume the risks inherent in going forward with transactions which appear to have serious legal deficiencies, Santa Fe would be prepared to not seek judicial review of your decision, provided that (1) you permit the IBLA to decide the appeals on the merits, (2) the *status quo* is maintained on the surface of the lands acquired by the BLM pending a final decision on the merits, *i.e.*, no relocation or construction activities be permitted, and (3) the fact that the transactions were permitted to go forward not be argued by the BLM as an equitable ground for sustaining the BLM decisions on the merits.

In addition, Santa Fe believes that it would be in the interest of all parties to convene a conference at an early date to discuss the possibilities for resolution of the present controversy. We believe that it would be particularly appropriate for such a meeting to be convened by former Secretary Clark, the President's special representative on Navajo-Hopi relocation matters.

Finally, let me emphasize Santa Fe's sincere and long held desire not to block or unduly delay implementation of the Navajo relocation program. Our sole objective is to prevent 240,000 acres of our mineral interests underlying the surface of the ranches selected by the Navajo Tribe for relocation from ending up within the boundaries of the Navajo Indian Reservation or otherwise being subjected to the sovereign authority of the Navajo Nation, for obvious reasons which we have detailed at length before Departmental and Congressional officials.

Respectfully submitted,

Jerome C. Muys

Jerome C. Muys
Counsel for Santa Fe Pacific
Railroad Company

JCM/pmg

cc: Hon. William P. Clark
Mr. Robert F. Burford
Hon. Bruce R. Harris (IBLA)

Department of Interior Building, Room 5117
18th & C Streets, N.W.
Washington, D.C. 20420

September 20, 1985

Memorandum

To: William P. Clark

From: Richard C. Morris

Subject: Navajo and Hopi Land Settlement Act

This is written confirmation of matters upon which we had conferred and reached conclusions and understandings relative to differences confronting the Navajo and Hopi Indian Tribes. It is further understood that the matters herein reported shall form the basis for your verbal presentation to President Reagan. Additionally, this material will be provided to those persons and agencies of government having a particular interest in resolution of intertribal differences.

On February 8, 1985, President Reagan commissioned you to determine if agreement could be effected between the Tribes over differences in implementation of the 1974 Hopi and Navajo Land Settlement Act and the 1980 amendment hereto (hereinafter, the Settlement Act). The Act requires, among other things, the relocation of Navajo tribal members from lands partitioned to the Hopi Tribe pursuant to the Settlement Act. You associated me, your former Counselor while at the Department of the Interior, to assist in this effort.

During the past seven months we have conferred with Chairman Peterson Zah of the Navajo Nation, with Chairman Ivan Sidney of the Hopi Nation, with other leaders in each nation, with tribal members affected by relocation as mandated in the Settlement Act, with concerned agencies of government and other institutions and persons having special knowledge of intertribal differences. We visited the disputed areas and those persons subject to relocation. We have made a serious attempt to understand particular associations and situations which threaten full implementation of the governing statutes. Those understandings probably cannot be fully achieved except by one who has experienced in depth the culture and traditions of both the Hopi and the Navajo Tribes. Our exposure to those cultures and traditions, while falling short of that necessary for a complete understanding, has nevertheless been sufficient for our purposes.

We approached this assignment with recognition that the issues to be addressed are governed by laws, and we have consistently urged compliance with relocation processes as mandated by governing statutes. However, our particular effort, as directed in the President's letters of February 8 to the Chairmen, is not to bring about compliance with the law. Other agencies of government have that responsibility. Rather, we sought to determine whether there were resolutions in which the Tribes could voluntarily join. Such resolutions could be effected either under existing law or changes in the law designed to accommodate tribal agreements.

It follows, of course, that should either Tribe irrevocably conclude that it is not in its individual best interest to negotiate with the other for an agreement, an agreement would not be possible. This does not mean that problems which confront the Tribes under existing law cannot be resolved, but only that they cannot be resolved by voluntary agreement between Hopi and Navajo. Agencies of government apart from our efforts have responsibility and authority for initiating processes to correct what they may deem to be improper or unjust. Some persons have, in error, assumed that the President's appointment vested in you an authority to make depositive decisions and to take unilateral actions. We have consistently advised, on each occasion when the question arose, that you lack such authorities. Those authorities and responsibilities to initiate actions remain with the vested agencies of government. Lacking agreement between the Tribes or change in existing law, it is clear that the relocation of Navajo from Hopi lands must go forward.

Historical Background

Limitations do not permit a full development of the centuries-old differences between Hopi and Navajo. Literally thousands of papers have been researched and written on those differences, generally posing contrasting solutions, many of which differ from solutions provided by existing law.

Few dispute that the Hopi have a longer authenticated history in North America than any other ethnic group. Today they occupy the same villages on high mesas in northeastern Arizona occupied by their ancestors centuries ago. They have been generally a peaceful people and, admirably, their Tribe is one of a very few which had no occasion to enter a treaty with the United States--perhaps to the Hopis' disadvantage. In 1882, President Arthur, by Executive Order, granted the Hopi a reservation in what is now northeast Arizona consisting of a rectangular area of approximately 70 miles in its north-south dimension and 55 miles in its east-west dimension (2,500,000 acres). At that time there were approximately 1,800 Hopi living on the reservation, and today that number has grown to approximately 11,000.

Although there is disagreement on when the Navajo first entered the area they now occupy in Arizona, New Mexico and Utah, their presence occurred much later than the Hopi presence but earlier than the arrival of the white man in the sixteenth century. The Navajo moved about in the area, becoming involved in confrontations with neighbors. In 1863, Colonel Kit Carson led a military force which impounded the main body of Navajo near Fort Sumner in New Mexico. In 1868 the United States entered into a treaty with the Navajo pursuant to which they were granted a reservation overlapping the northern Arizona-New Mexico border. That reservation has been successively expanded, mainly in a westwardly direction, and today is as large as the State of West Virginia (approximately 16,000,000 acres) and completely surrounds the Hopi reservation. Since 1868 the approximately 8,000 Navajo on the reservation has increased to approximately 165,000.

Intertribal problems might well be expected when a smaller, probably less aggressive Indian nation occupies an island reservation within the reservation of a much larger, expanding Indian nation. However, the problems and their solutions are far more complex than those arising merely from the physical juxtaposition of the two reservations. In major part, the complexity arises from historical, cultural and traditional considerations.

Life styles of the two Tribes following establishment of the reservations led to immediate problems. Hopis generally limited their living areas to their mesa villages concentrated near the center of the reservation (hereinafter referred to as District 6), using the outlands for grazing, growing, gathering and religious and cultural purposes. The more nomadic Navajo wandered onto and lived within the 1882 Executive Order reservation. While that Executive Order provides a reservation "for the use and occupancy of the Moqui (Hopi)," it further ambiguously provides for use and occupancy of "such other Indians as the Secretary of the Interior may see fit to settle thereon." There were at least 300 Navajo residing on the reservation in 1882, and in following years their population increased significantly. The ambiguity of the Executive Order led to conflicting claims of entitlement to the 1882 reservation area. Efforts to resolve the controversy were unsuccessful, and in 1958 the Congress authorized commencement of court proceedings to determine rights and interests of the Tribes "as may be just and fair in law and equity." At that time there were almost 9,000 Navajo on the 1882 reservation, a population significantly larger than the entire Hopi population. In the same year the Hopi commenced an action which became known as Healing v. Jones in the Untied States District Court of Arizona.

The District Court rendered its decision in the Healing case in 1962. In support of its judgment the court made extensive findings of fact. Many of these findings continue to be challenged, as they were during trial. We neither challenge nor confirm findings relative to historical and religious matters and we must accept as final those determinations made by an institution of our government which has addressed them in due process proceedings. Perhaps most significantly, the court found that while the Secretary of the Department of the Interior never expressly "settled" Navajo on the 1882 reservation as authorized by the Executive Order, it was deemed that the Navajo had been impliedly settled by virtue of Secretarial inaction to Hopi complaints, thus condoning Navajo presence. The court appeared to find that the Hopi had been disadvantaged by such inaction and the ever expanding needs of the enterprising Navajo population, neither of which the Hopi could control. It describes the Navajo as having a "proclivity to commit depredations against the Hopi," and the government as reticent to antagonize the Navajo. It states that the failure of the Hopi to make fuller use of the 1882 reservation outside of District 6 "was not the result of a free choice on their part. It was due to fear of the encircling Navajos and inability to cope with Navajo pressure." The court nevertheless concluded that both the Navajo and Hopi Tribes had been settled on the 1882 reservation. It declared that, subject to the trust title in the United States, the Hopi Tribe has an exclusive interest in District 6 and that the Hopi and Navajo Tribes "have joint, undivided and equal interest in and to all the 1882 reservation" other than the area of District 6. The "Joint Use Area," as it became known, occupies approximately 1,900,000 acres of the 2,500,000 acre 1882 reservation.

The District Court concluded that the 1958 enactment authorizing the Healing litigation did not confer jurisdiction upon it to divide the Joint Use Area (JUA) into equal exclusive enclaves for each the Hopi and the Navajo Tribes. That division was left to the Settlement Act in 1974. In principle part, the act provides for mediation by the Tribes for partition of the JUA, for recommendations to the court in supplemental Healing proceedings to be made by a mediator should the Tribes fail to agree on partition, and for court partition of the JUA. Only the surface rights of the JUA were subjected to partition, with the Tribes retaining their joint and undivided interests in subsurface mineral resources. The act also establishes the Navajo and Hopi Indian Relocation Commission, and charges the Commission with reporting on, accomplishing and paying for the relocation of Hopi and Navajo families away from lands partitioned to the other Tribe. Relocation is scheduled for completion on July 6, 1986. After that date, those Indians remaining on lands not apportioned to their Tribe will technically be trespassers subject to eviction and other judicial processes.

The Tribes were unable to agree on partition and a partition line equally dividing the land area of the JUA between the Hopi and Navajo Tribes was eventually fixed by a mediator and approved by the court. Fixing the line was extremely difficult because of the very large population of Navajo throughout the JUA. While centers of Navajo population were sought to be included on the Navajo side, the line could not be drawn except with large Navajo populations on the Hopi side. There were approximately 12,000 Navajo and only 100 Hopi subject to relocation by placement of the line. In some instances Navajo families had resided on what became Hopi Partition Land (HPL) for generations dating back before the 1882 Executive Order. Other relocatee families were those of veteran World War II Navajo Code Talkers who contended they had fought to protect their right to these lands. Others were families who once before had been subjected to relocation when they were first required to abandon their Navajo homes within District 6.

Anticipating the need for additional lands to accommodate the large numbers of Navajo to be relocated, the Congress provided for the acquisition of 400,000 acres of new lands by the Navajo for annexation to their reservation. This acquisition would approximate 42% of the area of the HPL from which Navajo were to be moved. The 400,000 acres consists of 150,000 acres to be acquired in fee by the Navajo, and 250,000 acres to be acquired by the Bureau of Land Management (BLM) for transfer to the Navajo. The Navajo have acquired their fee lands (The Bar N Ranch) and the BLM, through extraordinary effort, is in the final process of completing acquisition of the adjoining ranches which make up the new lands. All the new lands will be adjacent to the present reservation in Arizona except for 35,000 acres in New Mexico, on which valuable coal deposits are located (the Paragon Ranch). BLM acquisitions in Arizona are of surface rights only and the acquisition process is being challenged by the Santa Fe Pacific Railroad Company, which owns underlying mineral interests. Santa Fe claims the BLM is required to acquire and transfer to the Navajo Tribe Santa Fe's mineral interests as well as the surface interests of the new lands.

At the present time the new lands are undeveloped, without adequate roads, water, fencing, food sources and infrastructures necessary to support relocatees. No provision has yet been made by the Congress or the Navajo Tribe to provide these resources.

Intertribal Differences Other Than Relocation

The 1882 reservation relocation problem is not the only major dispute confronting the Navajo and Hopi Tribes. By Act of Congress in 1934 ("The 1934 Act"), the boundaries of the Navajo reservation in Arizona were defined and certain lands designated "for the benefit of the Navajo and such other Indians as may already be located thereon." The Hopi have long claimed rights arising out of The 1934 Act. A well-established Hopi village, Moencopi, exists within the Navajo reservation in Arizona. Pursuant to long ignored Hopi claims, in 1966 Indian Commissioner Robert Bennett imposed a "freeze" (to become known as the "Bennett Freeze") on a large area within the Navajo reservation lying westerly of the 1882 reservation. The freeze precludes improvement within the area--as, for instance, improvements to a residence--without the concurrence of both Tribes. The freeze was intended to be short lived, the Commissioner hoping it would influence the Tribes to soon settle their differences. However, the freeze has continued for a score of years, working mainly to the disadvantage of Navajo who seek to improve their living conditions within the area.

The Settlement Act of 1974 expressly authorized the commencement of litigation to resolve claims of interest within areas described by the Act of 1934. The Hopi Tribe immediately commenced a suit, claiming an undivided one-half interest in a large portion of the Navajo reservation in Arizona. The Navajo answer to the complaint concedes only the Moencopi area to the Hopi. A partial judgment has been entered, denying the Hopi claim of a one-half interest in all the disputed lands, but holding that Hopi has an exclusive interest to all lands that were exclusively "occupied, possessed or used" by Hopis in 1934, and a one-half interest in lands jointly "occupied, possessed or used" in 1934 by Hopi and Navajo. The 1934 litigation is at a standstill, pretrial discovery not yet having been completed and a petition for intervention by the San Juan Southern Paiutes, who also claim tribal rights to a portion of the 1934 area, not yet having been resolved.

Other significant litigation is also at issue. In the main, these suits arise out of the Settlement Act, Navajo continued occupation of the HPL, and alleged failures of United States officials. In all these suits it is Hopi who are the complainants. The following actions are pending in the United States District Court for the District of Arizona, unless otherwise indicated.

Sidney v. Zah is a supplemental proceeding to the Healing case. As authorized by the Settlement Act, Hopi seeks a payment from Navajo to balance the lesser resource value Hopi claim to have received under partition of the JUA. Navajo claims U.S. responsibility for this payment. Hopi also seek to hold the Secretary of the Department of the Interior in contempt for failure to complete stock reduction of Navajo flocks on the HPL, and failure to complete a five-mile portion of a fence required to be constructed along the JUA partition line. The gap in the fence has been kept open in part through efforts of persons sympathetic to Navajo in an area known as Big Mountain in the HPL. The Hopi claim may approach $100,000,000.

Hopi Tribe v. Hodel, Hopi seek rental payments for Navajo use of the HPL pending relocation of Navajo. The Secretary has recently placed a grazing fee value of $1,300,000 for use of these lands during the period 1978 to 1982.

In Hopi Tribe v. United States (U.S. Court of Claims), Hopi seeks money damages against the United States for the alleged failure of the Secretary to collect trespass penalties, damages to land caused by failure of Navajo shepherds to keep animals off HPL, and the value of forage consumed by trespassing animals. In two other suits the Hopis seek similar damages against the Navajo Tribe.

Status of Relocation

All Hopi originally on Navajo Partition Land (NPL) have been relocated, and pose no problem. Many Navajo families have been relocated from HPL, although not all relocations have been successful. A significant number of Navajo who voluntarily accepted relocation to off-reservation, urban areas have suffered severely. Particularly the older—or traditional—families have been unable to cope in an urban or even suburban environment. Some could speak only in their native tongue and had no marketable skills. They had no understanding of municipal taxes, utility services or maintenance of the simplest mechanical devices in their modern homes. They soon were in debt and became victims of unscrupulous lenders. Many lost or sold the homes provided by the Relocation Commission, probably the central reason they had agreed to move in the first instance. Many suffered severe emotional traumas when placed in an environment in which they could not cope, and now regret their decision to move. The Relocation Commission, whose task under the Navajo and Hopi Land Settlement Act is a most difficult one, has instituted procedures designed to better assure the success of relocations, both on and off the reservation.

There remain on the HPL today a disputed number of Navajo families subject to relocation. According to the Relocation commission, there are approximately 350 families (often an "expanded" family, but generally four to six members) who continue to reside on HPL. Of these, approximately 300 families have voluntarily agreed to be relocated, leaving 50 families who refuse relocation. The Navajo claim this number is much larger and, while visiting throughout the HPL, it appeared to us that there are indeed many more than 50 families who adamantly reject relocation. It may be that our chapter meetings with Navajo on HPL were attended by other Navajo who added their voices to those of the chapter members, and that our perception that there are more than 50 dissident families is in error. Or it may be that some who earlier indicated a willingness to relocate have reconsidered in view of the experiences of those who have undergone relocation. In any event it appears clear that a substantial number of Navajo now on HPL will reject voluntary relocation and stand firm against forcible eviction after July 6, 1986. There is also sound reason to believe that those Navajo who choose to physically resist relocation will be encouraged and assisted in that effort by others, both Indian and non-Indian activist. We have received communications from numerous persons who overwhelmingly support the right of the Navajo traditionalists to remain on the lands of their ancestors. A forced relocation, of course, is the very thing we hoped could be avoided.

The Case for the Hopi

Following is a statement of the case for the Hopi as if stated by an advocate for that Tribe. Following that statement, we next make the case for the Navajo, again as if stated by an advocate for that Tribe.

History is on the side of the Hopi. Lawyers will conclude that they are entitled to what the law now provides. They have consistently abided by the law, as that law has been thrust upon them by the United States Government. In 1882 they were vested with land which—they still argue—was their exclusive reservation because the Secretary of the Department of the Interior never "settled" other Indians on those lands although he was expressly authorized to do. They lost that argument in the Healing case because Navajo encroachments onto the reservation were condoned by the Secretary through inaction, sometimes deliberate, in response to numerous Hopi protests. While the Hopi believe the Navajo thus profited by their aggressions, the Hopi have nevertheless accepted the court's decision in Healing and the subsequent congressionally imposed partition of the JUA. That partition resulted in the transfer of 950,000 acres of Hopi lands to the Navajo, who already have a reservation area ten fold that of the Hopi. The Hopi, in accepting what they deem to be injustices, argue that the former land dispute has thus been finally settled and there is no longer a need for negotiations.

To even propose to the Hopi that they should surrender some of the HPL in favor of the Navajo is taken by the Hopi as in bad faith. Their religion and culture do not permit them to sell their land, whatever the exchange, as only land has a real and lasting value. Land is the only commodity which protects future generations, and to surrender it would be a breach of Hopi religious and cultural responsibilities.

More practically, the Hopi point out that their reservation, being an island within the Navajo Reservation, cannot be expanded in any direction. However, the Navajo can continue to expand the unrestricted borders of their reservation to accommodate future needs, and they have constantly sought such increases over the last century. They will shortly acquire another 400,000 acres of new lands. How, the Hopi ask, can you propose the further surrender of some of our limited lands to the insatiable demands of the Navajo Tribe? If it is because Navajo on Hopi lands may be distressed because they must relocate, a line must be drawn at some point else Hopi will eventually be consumed by the Navajo. The Hopi conclude that the Congress and the courts have drawn the line and the United Sates Government must abide by the law which it has fashioned. The Navajo Tribe must also abide by that law because, according to Hopi, the Navajo has not offered to surrender enormous benefits which the law has accorded to them in anticipation of Navajo compliance with the relocation process.

The Case for the Navajo

Navajo leaders have long advocated repeal of the Settlement Act, but now appear to recognize that, because of substantial performances under the act, injustice and confusion would be created by repeal. They nevertheless seek amendments which would ease the burden of relocation.

Unlike the case for the Hopi, the Navajo case does not depend on overall tribal concerns as much as it depends on personal concern for those Navajo subject to relocation. It is difficult to appreciate these concerns without an understanding of the traditional Navajo perception of family lands. While many Navajo appear to have easily adapted to the customs and ways of the white man, the true traditionalists—those who speak only Navajo, who have not had the opportunity to attend reservation schools and depend for their livelihood on skills acquired in tending the fields—have a special feeling for the land, particularly for that immediate land on which the traditional residence, or "hogan," is located. This feeling is founded in part on ceremony and theology, including the positioning of the hogan to face the rising sun and the burying of the umbilical cords of the newly born. Thus, removal from family lands to strange lands, even though to other Navajo reservation lands, creates a sense of failure accompanied by severe emotional trauma and withdrawal. Some who are threatened by relocation conclude that because their lives would serve no further purpose in a strange environment, they would prefer to sacrifice their wasted lives by resisting relocation. To such Navajo, any inducement for relocation is insufficient.

While it is true that the Hopi legally own—subject to the federal trust—the land on which traditional Navajo now reside, such Navajo totally reject the concept of ownership of reservation lands. Land is the "mothergod," not owned by any temporary possessor. They argue that it is they who are closest to the particular lands they and their ancestors have occupied for as long a time as memory serves regardless to whom our government has conferred a title. They, their children and their ancestors were born and buried on these lands. They have collected herbs, tended flocks and protected the land against the elements and trespassers. They are the ones who have been charged by culture and tradition with maintaining and protecting the land for future generations. To these Navajo, those Indians who live elsewhere claiming title to lands they only occasionally walk over are the true intruders. If Navajo are forcibly removed, their hogans will be destroyed and they will be replaced on the land by sheep or cattle, if replaced at all.

The case for the Navajo is not one for the Navajo as a nation, but rather for those individual Navajos subject to a relocation which may be life threatening, emotionally and physically. Whatever the conduct of Navajo a century ago, the Navajo now subject to relocation are not yet guilty of wrongdoing. If the Hopi were victims of federal inaction during the last century, surely today's traditionalists Navajo are victims of the relocation process as fashioned by the Congress.

Proposals for Resolution

Early in February 1985 we met with the Chairmen of the Hopi and Navajo Tribes on the 1882 reservation. We obtained from each a commitment for a good faith effort to reconcile their differences.

It was our initial perception that the key to resolution of the whole multitude of issues confronting the Tribes was some agreement on relocation of Navajo from HPL. Should such an agreement be reached, it seemed likely that the Tribes could resolve their many other problems. At the same time, if agreement on relocation could not be reached, it seemed unlikely the Tribes could ever reach other issues. That perception still prevails.

One solution of the relocation issue is, of course, full performance under existing law resulting in removal of Navajo from HPL, voluntarily or involuntarily. Our mission has been to determine whether there is an alternate solution. We could see only two possible alternate solutions. One was to redraw the JUA partition line to include on the Navajo side those or many of those Navajo now residing of the Hopi side. It was clear that the line could not be redrawn simply by including on the Hopi side former Navajo lands equal in size to former Hopi lands to be included on the Navajo side. Because of the heavy population of Navajo along the line, such an exercise would merely subject different but approximately equal numbers of Navajo to relocation, thus solving no problem. Obviously, the Hopi would have to be compensated in some manner for lands given up. Much of our effort on the reservations was expended exploring with the Hopi leadership their response to any proposal which would have required some exchange of HPL. Although we persisted in our effort to discuss land exchanges, the Hopi never indicated a willingness to discuss exchanges and never submitted an exchange proposal. Eventually, we were advised that whatever the resource value of assets to be exchanged, the Hopi could not willingly surrender even an acre of HPL.

We have reluctantly accepted the fact that, at this time, the Hopi cannot or will not negotiate for an exchange of HPL. In a sense, this was unfortunate for the Hopi, as we were ready to propose that in return for some Hopi lands along the partition line--lands that are central to the dispute--the Hopi would receive assets of much greater resource value encompassing the full range of the multitude of differences besetting the Tribes. Such a proposal could have tendered to the Hopi lands included in the 1984 Act, some portion or all of the BLM new lands, a greater interest in jointly held coal royalties and jurisdiction of mineral leases, favorable resolution of some or all of the pending lawsuits including the suit based on the 1934 Act, some interest in a public-private joint venture for development of the mineral resources of the Paragon Ranch, or increased interest in other valuable resources.

The Navajo were, and remain, ready to negotiate for land exchanges. Proposals were submitted to us by the tribal leadership as well as by individual Navajo chapters on the HPL. The chapter proposals seek individual resolutions within the immediate areas of chapter locations. Generally, the initial Navajo tribal proposals were deemed by us to offer insufficient resources to warrant surrender of the disputed lands by the Hopi. Nevertheless, those proposals were within range of what we would have deemed to be adequate and, given the flexibility which the Navajo demonstrated throughout our discussion, we saw their proposal to at least state a negotiable position. Chairman Peterson Zah, throughout our discussions, exhibited courage and a motivation to ease the burden of those subject to relocation. He demonstrated his willingness to commit tribal resources to preserve traditional homesites, fully aware that there was considerable intratribal political risk to himself. However, the Navajo proposals were never communicated to the Hopi as all such proposals would have required surrender of HPL and, we were advised, to submit such a proposal would constitute an insult to the Hopi.

The remaining possible basis for an agreed resolution not involving a land exchange, is an arrangement for permitting entrenched Navajo to continue to remain on lands they occupy while recognizing Hopi jurisdiction. The Settlement Act provides for life estates for qualifying Navajo but, because Navajo saw these as too restrictive and, in effect, constituting "death estates," the statutory provisions have been rejected by Navajo.

We met with the Chairmen of the two Tribes in Washington on August 6 and 7, for the express purpose of determining whether the Chairmen could reach an understanding for negotiating an arrangement for Navajo to continue to reside on HPL. It was recognized by the Navajo at this meeting that the HPL was, in effect, Hopi land and that Navajo who might remain on the land would necessarily be there only as "tenants." At issue were matters such as who could qualify as tenants, the total number who might so qualify, whether new families could take up residence, whether new homes might be constructed, who would have jurisdiction to police and manage the occupied lands, what rental to pay for occupancy, what time limitations might be placed on the occupancy, and others. A memorandum of understanding was discussed and prepared but not signed, principally because Chairman Sidney stated that he could not do so without first obtaining approval from the Hopi Tribal Council, the executive body of the Hopi. Chairman Peterson Zah presented a modified version of the memorandum which, he said, he had been authorized to sign. The Chairmen and their advisors left Washington, and Mr. Sidney sought the advice of his constituency. On August 21 we were informed by Mr. Sidney that the Hopi were unable to execute a memorandum of understanding in part because, on earlier occasions, both the government and the Navajo had defaulted on other "agreements." Mr. Sidney further explained that the Hopi leadership were of the view that they, being the landlord of lands sought to be occupied by Navajo, would unilaterally fix the terms and conditions of occupancy; that those terms and conditions were not negotiable with the Navajo. He stated, and exhibited documents which supported his statement, that the Hopi were then in the process of developing a plan for occupancy of their lands; that the plan required the confirmation of each village within the Hopi Nation; and that he would present and explain the plan to us when fully developed and confirmed. the confirmation process is still ongoing and we cannot speculate on its content as being sufficient to satisfy either those Navajo subject to relocation or the Navajo Nation.

We stated earlier that our mission was to determine whether agreement could be effected between the Tribes, and we noted that an agreement would not be possible should either Tribe deem it not to be in its best interest to negotiate with the other. We also noted that there were but two bases for negotiations designed to relieve the burden of relocation—land exchanges and permissible living arrangements for Navajo on Hopi lands. The Hopi have made it abundantly clear that at this time neither concept is negotiable.

We think it must be understood that we believe the Hopi have concluded in good faith that it is not in their best interest to negotiate; that implementation of the current law better serves their interests and accomplishes what they deem to be substantial justice. While we may disagree with that conclusion, it is an internal decision which the Hopi must make and, we believe, has honestly been made by a consensus. As stated, the executive function in the Hopi Tribe is exercised by the Tribal Council and that council has lacked a quorum during all or a major portion of the time we have communicated with the Hopi. However, the decision not to negotiate has been conveyed to us by not only the Chairman but by other tribal leaders, including individual council members, by a negotiating committee and by the politically powerful leaders of the villages. There remain some traditional leaders, supported by Hopi who have intermarried with Navajo, who are opposed to relocation of their Navajo brother. They appear to represent a minority of those who speak to the issue, and their voices have not been effective. Nevertheless the consensus view remains in some little doubt as, traditionally, the Hopi indicates dissent by nonparticipation rather than by expressed opinion. While the difficulty of decision making within the Hopi Tribe has posed some problems for us, those problems have also been experienced by Chairman Ivan Sidney, who has cooperated with us to the full extent that he is able. His first allegiance in these matters, of course, must be to the Hopi Tribe. He has well served that allegiance and, at the same time, accommodated our mission.

Conclusion

It is regretted that both Tribes do not embrace negotiation as a means of solving their complex differences. After a century of standing their ground on fundamental issues, they continue to look for others to provide solutions. In our view, negotiated resolutions on the broad range of differences confronting the Tribes would lead to far better results than would resolutions imposed by the courts or by the Congress. More importantly, good faith negotiations would create an improved relationship for badly needed cooperation between the Tribes. In July we were invited with the Chairmen and their representatives to attend and take part in an informal discussion of legal issues confronting the Tribes in the Chambers of Judge Earl Carroll of the Federal District Court for the District of Arizona. Judge Carroll urged the Tribes to embrace the President's initiative. He stated that legal proceedings then before his court would take years to resolve at costs of millions of dollars with likely unhappy results for each Tribe. He also said that the Tribes should not look to the Congress to solve their differences, as Congress and the Bureau of Indian Affairs had been, in part at least, the source of the problems; that the President's initiative, even if it resulted in only an agreement for binding arbitration, was an opportunity the Tribes should seize. We, but not both Tribes, were persuaded by Judge Carroll's recommendations.

In performance of our mission to determine whether the Tribes can reach agreement for accommodating the concerns of each other, we have been urged to fix responsibility for the situation in which the Tribes find themselves. We do not think it would be productive to do so. We can, at least to some extent, understand and appreciate the basis for the contentions of each Tribe and have great sympathy for the positions urged by them.

There are presently no remaining issues before us in our effort to determine the likelihood of resolution through negotiation. While the Hopi have made it clear that they cannot now negotiate for a resolution of the relocation problem—a "problem" the Hopi do not recognize—we cannot foreclose some further opportunity for negotiations should events, including tribal perceptions of forthcoming Congressional action, motivate the Tribes to negotiate. However, it seems unlikely that there will be tribal agreement between now and July 6, 1986. Time constraints demand that the responsible agencies of government now undertake whatever action they deem appropriate to solve intertribal issues. If action is to be taken, it is hoped that the whole range of issues--not just today's relocation problem—be addressed. Unless a comprehensive plan be thoughtfully developed and put in place, fundamental tribal disputes may persist for still another century.

RELOCATION COMMISSION STATEMENT

Mr. YATES. Mr. Watkins has requested time to make a statement and that time is being made available now, Mr. Watkins.

Mr. WATKINS. Thank you very much.

I appreciate the opportunity very much. We welcome this opportunity to appear before you today and share with you some thoughts that we have been desirous of communicating to you since the last time we appeared before this committee in regard to the Commission's fiscal year 1986 appropriation.

As your staff has undoubtedly informed you, the Commission has been quite active during 1985 urging both the administration and the Congress to take extraordinary efforts to aid the Commission so that it might accomplish the relocation of the remaining families occupying the Hopi Partitioned Land by the statutory deadline of July 6, 1986 or provide a realistic alternative.

For some six months, we played a behind-the-scenes role in doing everything within our power to make the Clark Mission a success. Everyone was hopeful that two tribes would be able to come to some accommodation among themselves through the good offices of former Secretary of the Interior Clark. The Commission recognized that regardless of the progress of the Clark Mission, the statutory deadline would not be changed unless the Congress acted.

We were very concerned that only one legislative vehicle was available to accomplish any change before the statutory deadline. We privately informed both the Congress and the administration that without additional resources, the Federal commitment to build or acquire replacement homes for each family found eligible could not be accomplished within the allotted time.

As the deadline neared, we also knew that unless we got sufficient resources to undertake a massive effort to complete home acquisitions, the relocation process would be stretched out for many more years. Building or acquiring the requisite number of houses in this time frame became impossible, so in consultation with Members of the House and the Senate, we explored other options that included a proposal that would have allowed the relocation commission to make cash equivalency payments to not only the families residing on the Hopi Partitioned Land, but all that had been adjudged eligible.

This would have allowed us to conclude the work of the Commission and be out of business shortly after the deadline. You will recall that for several years now, the Appropriations Committees of the House and the Senate have restricted Commission funds for use primarily for the relocation of families still on the joint use area. We raised the question on whether there was political support on Capitol Hill to allow us to translate the current average level of benefit into cash.

This concept was to offer that cash as an equivalency in order to induce the family's remaining on the Hopi Partitioned Land to leave by the deadline. We felt that there was a good possibility that the families that were still occupying the Hopi Partitioned Land, some 300, might accept this incentive.

We offered to broker this option if Judge Clark were interested in having this as one of his potential solutions. We informed Mr.

Dick Morris, Judge Clark's principal agent, that we were operating a very short fuse. The fiscal year 1986 continuing resolution was the only available legislative vehicle that could carry the legislative changes that would be necessary if cash equivalency was to be implemented.

After more difficult months of behind-the-scenes negotiations with members of the administration and the Congress, we were convinced that in this era of Gramm-Rudman, it would be most difficult to succeed with this strategy. Our selling points were simple. It would save the taxpayers money, fulfill the U.S. Government's solemn contractual obligation, avoid the possibility of hundreds of millions of additional tax dollars being awarded by a Federal Court for failure to meet the deadline, put the Relocation Commission out of business, and most importantly, resolve the uncertainty and anguish for hundreds of our native American families.

Attached to my statement today, I have a breakdown of the estimate of the comparison of the cost between this cash equivalency concept and the continuation of the status quo program. That would have taken us to 1993. We informed the Congress that we felt we could save the taxpayers some $100 million if we adopted a cash equivalency payment.

I want to point out that the cash equivalency concept would have also applied to the class of relocatees who complied with the law and removed themselves from the area of controversies.

They have been waiting benefits promised to them, and the Federal Government has a contractual obligation to them. Some of these families have been waiting since 1974 or early 1975. We undertook the cash equivalency proposal as a serious ender to find another route to accomplish the relocation by the statutory deadline.

It is our fondest hope, and was then, to put the Relocation Commission out of business permanently. Following the payment to those families that were willing to take the cash equivalency, the Relocation Commission would have turned over an ongoing responsibility of the families involved to existing governmental agencies that traditionally have that responsibility, such as the Bureau of Indian Affairs and the Indian Health Service.

Mr. Chairman, once we realized we were not gong to be successful with the cash equivalency concept, we turned our attention to trying to convince the administration and Members of Congress that something had to be done in order to avoid or minimize the problems we envisioned when the July 1986 deadline was not met.

Mr. Yates. To whom did you present the cash equivalency concept? I don't recall that we ever saw it.

Mr. Atkinson. Mr. Yates, the reason that you hadn't seen that is we unsuccessfully sought to sit down with you for the last six months, and you were never free to sit with us, and that is why.

Mr. Yates. When did you try to sit with us? I don't recall.

Mr. Atkinson. Mr. Craft can answer that.

Mr. Yates. Mr. Craft.

Mr. Craft. Yes, Mr. Chairman. I brought that proposal, and I did talk to staff. I explained——

Mr. Yates. Staff says, no.

Mr. **Craft**. Mr. Chairman, I am an attorney. I work for the Relocation Commission. I am in Washington, D.C. I represent other interests. I did talk to both of your staff and I am aware of both of them, and in the course of this process, Mr. Chairman, if you may remember, the people when you asked who we spoke to, Senator Goldwater on the Senate side, Senator McClure, Senator Hatfield, Mo Udall on the House side, and at one point in time, Mr. Chairman, Chairman Udall attempted to try to get me in to see you.

You were going off to Chicago that Friday, and I had his staff—several of the people—Stan Scoville, who is the chief of staff for Chairman Udall on the Interior Committee, interceded on my behalf on several occasions, and I was under instructions from the Chairman of the Relocation Commission to present this concept to you to find out whether or not this concept was something that might be plausible that could be used as a part of Judge Clark's availability of tools to try to get the two tribes to accommodate themselves.

The question really was whether or not there was political will on Capitol Hill to translate the current level of benefits into cash and offer that in lieu of building the house since the house couldn't be built. But I want to assure you, Mr. Chairman, that we made every chance, every effort to try to talk to you in private about this, just as we did—and we did succeed, Mr. Chairman, with all the other Members that we talked to, including Congressman McCain.

Ms. **Massetto**. Mr. Chairman, I have never had either one of my colleagues or Mr. Craft discuss that plan with me. I had heard through the grapevine somebody was on the Hill proposing such a plan. A question was asked in our monthly meeting, I believe it was in September, by the Navajos if we had made that suggestion to our Washington counsel. Fred Craft and both of my colleagues said that they had not.

Now, I don't understand that.

Mr. **Atkinson**. Mr. Chairman, I think if we get the record, it will show that that is a misstatement, and that was not——

Ms. **Massetto**. We will get the record. We will get the record.

COMMISSION LEGAL STAFF

Mr. **Yates**. We will get the record and see. I am told by staff that only one of them talked to Mr. Craft.

Incidentally, how many lawyers do you have? You have Ms. Crystal up in the State of Washington, and you now have Mr. Craft here.

Do you also have a lawyer back in Arizona?

Mr. **Watkins**. No. Sue is on board at the Commission in Flagstaff, sir, Ms. Crystal.

Mr. **Yates**. You also have Mr. Loesch as a lawyer.

Mr. **Watkins**. Mr. Loesch is associated with——

Mr. **Craft**. My law firm is Craft and Loesch. Mr. Loesch is a former Assistant Secretary of the Interior. We have provided services to the Relocation Commission since 1982.

Mr. **Yates**. How much have you received in fees?

Mr. **Craft**. I don't have the figure. I am sure the Relocation Commission has it. We have been on a contract just as all the lawyers for the Relocation Commission have been on a contract basis and——

Mr. **Yates**. The staff says you have received $120,000 from the Commission.

Mr. **Craft**. That may be true since 1982. That may be true, Mr. Chairman.

Mr. **Watkins**. We will be glad to furnish that for the record, Mr. Chairman.

Mr. **Yates**. I wish you would.

[The information follows:]

Mr. Chairman, the following is a recap of funds disbursed to each of the Commission's legal counsels, under contracts which have been executed since FY 1982. The scope of work for each of their respective contracts is also provided for the record.

1. Fred Craft & Richards / now known as Craft & Loesch

Year	Total Obligation	Total Paid 1/
1982	$ 23,000.00	$ 23,000.00
1983	66,477.54	66,477.54
1984	53,902.98	53,902.98
1985	108,335.79	108,335.79
1986	70,000.00	40,366.91
Totals	$321,716.31	$292,083.22

2. Susan E. Crystal

Year	Total Obligation	Total Paid 2/
1982	$ 6,550.00	$ 6,550.00
1982	1,010.11	1,010.11
1983	27,650.00	27,650.00
1983	11,378.00	11,378.00
1984	43,722.83	43,722.83
1985	73,049.96	73,049.96
1986	65,052.00	25,199.61
Totals	$228,412.61	$188,560.22

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1 Includes $15,425 for subcontracting costs and approximately 5% for travel and expenses.

2 Includes no money for subcontracting costs and approximately 32% for travel and expenses.

AWARD/CONTRACT

1. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1 ▶

RATING

PAGE 1 OF 1

2. CONTRACT (Proc. Inst. Ident.) NO.

3. EFFECTIVE DATE 10-1-85

4. REQUISITION/PURCHASE REQUEST/PROJECT NO. 11-60007

5. ISSUED BY CODE

Navajo and Hopi Indian Relocation Commission
P.O. Box KK
Flagstaff, AZ 86002

6. ADMINISTERED BY (If other than Item 5) CODE

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code)

Craft & Richards
Attorneys-At-Law
1050 Thomas Jefferson Street
Sixth Floor
Washington, D.C. 20007

CODE

FACILITY CODE

8. DELIVERY

☐ FOB ORIGIN ☐ OTHER (See below)

9. DISCOUNT FOR PROMPT PAYMENT

10. SUBMIT INVOICES (4 copies unless other wise specified) TO THE ADDRESS SHOWN IN ▶ ITEM #5

11. SHIP TO/MARK FOR CODE

12. PAYMENT WILL BE MADE BY CODE

Navajo and Hopi Indian Relocation Commission
P.O. Box KK
Flagstaff, AZ 86002

13. THIS ACQUISITION WAS (Check appl. box(es))

☐ A. ADVERTISED

B. NEGOTIATED PURSUANT TO: ☐ 10 USC 2304(a)( ) ☒ 41 USC 252(c)(4)

14. ACCOUNTING AND APPROPRIATION DATA

48X624252

15A. ITEM NO.	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
1.	Not to exceed 504 hours of professional service in accordance with the attached Scope of Work	504	hrs.	$ 125.00	$ 63,000.00
2.	Reasonable and necessary expenses incurred in conjuntion with performance of this contract not to exceed	1	ea.	7,000.00	7,000.00
				15G. TOTAL AMOUNT OF CONTRACT ▶	$ 70,000.00

16. TABLE OF CONTENTS

(✓)	SEC.	DESCRIPTION	PAGE(S)	(✓)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
X	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. ☒ **CONTRACTOR'S NEGOTIATED AGREEMENT** *(Contractor is required to sign this document and return* 2 *copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. *(Attachments are listed herein.)*

18. ☐ **AWARD** *(Contractor is not required to sign this document.)* Your offer on Solicitation Number ____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)

W. O. Craft, Jr.
Attorney

19B. NAME OF CONTRACTOR

BY WOCraft Jr
(Signature of person authorized to sign)

19C. DATE SIGNED

20A. NAME OF CONTRACTING OFFICER

Ralph A. Watkins, Jr.
Chairman

20B. UNITED STATES OF AMERICA

BY Ralph A Watkins Jr
(Signature of Contracting Officer)

20C. DATE SIGNED

NSN 7540-01-152-8069
PREVIOUS EDITION UNUSABLE

STANDARD FORM 26 (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.214(a)

BEST COPY AVAILABLE

ARTICLE I - SCOPE OF WORK

The contractor shall provide professional services as follows:

1. Perform as the General Counsel of the Relocation Commission with overall responsibility for directing and carrying out all legal and legislative matters pending or that may arise during the period of this contract.

2. Act as the primary counselor to the Commissioners.

3. Act as the primary staff representative of the Commission in liaison with other Government agencies, the Congress and private parties, for the purpose of facilitating the successful transfer of the area known as the Paragon Resource Ranch from the Bureau of Land Management to the Navajo Tribe.

4. Represent the Commission in negotiations with Government agencies, the Congress and private parties, for the purpose of facilitating the successful transfer of any additional lands selected pursuant to P.L. 96-305 by either the Navajo Tribe or the Navajo and Hopi Indian Relocation Commission.

5. Undertake such other inquiries, negotiations or representation as may be assigned by the Commissioners in the furtherance of P.L. 96-305.

ARTICLE II - TYPE OF CONTRACT

1. This contract shall be a labor-hour contract in accordance with Section 1-3.406-2, Title 41 of the Code of Federal Regulations

ARTICLE III - TERM OF CONTRACT

1. The period of this contract shall commence October 1, 1985 and continue through September 30, 1986.

ARTICLE IV - METHOD OF PAYMENT

1. The contractor shall be paid as follows:

   a. $125.00 per hour for each hour, or a prorated amount for each portion of an hour, during which the contractor is involved in the actual accomplishment of the contracted services.

   b. Reasonable and necessary miscellaneous and travel expenses incurred in conjunction with the performance of this contract shall be reimbursed at cost.

   c. The contractor is authorized to secure in-house or sub-contracted legal assistance @ $125.00 per hour with related reasonable and necessary miscellaneous and travel expenses. The charges for such services and expenses are included in and subject to the total monetary limit of the contract.

2. Monthly invoices shall be submitted as follows:

   a. A monthly invoice itemizing the number of hours spent in connection with services performed under the terms of this agreement and conforming to the contractors normal billing format.

   b. A travel and miscellaneous expense claim detailing and documenting such expense in accordance with this Article, Paragraph 1B, shall accompany the monthly invoice.

   Invoices shall be submitted to:

   Navajo and Hopi Indian Relocation Commission
   P.O. Box KK
   Flagstaff, Arizona 86002
   Attn: Anna L. Hernandez

   c. The total amount of this contract shall not exceed $70,000.00.

ARTICLE V - TECHNICAL DIRECTION

1. The performance of work required herein shall be subject to the technical direction of the assigned Contracting Officer's Technical Representative (COTR) named herein below of his designee(s).

2. As used herein, "technical direction" is direction to the contractor which requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the contractual statement of work. The technical direction to be valid:

   a. May be issued verbally or in writing consistent with the general scope of work set forth in the contract.

   b. May not constitute new assignment of work or changes to the expressed terms, conditions, or specifications incorporated into this contract, and,

   c. Shall not constitute a basis for extension of the contract delivery schedule.

3. Nothing contained in this article authorizes the contractor to incur costs in excess of the estimated cost or other limitations of funds set forth in this contract document.

4. The COTR assigned to this contract is:

   Ralph A. Watkins, Jr.
   Navajo and Hopi Indian Relocation Commission
   P.O. Box KK
   Flagstaff, Arizona 86002

ARTICLE VI - CONTRACTING OFFICER AUTHORITY

1. Only the Contracting Officer can legally bind the Government to any changes under this contract and commit the Government to the expenditure of funds. The performance of work required under this contract shall be subject to the supervision of the COTR shown in Article V, Paragraph 4. Neither this individual nor any other Technical Representative of the Government can authorize a change in the Scope of Work of the incurrence of cost in excess of the amount of funds allotted to this contract. If there are any doubts in this regard, contact the Contracting Officer prior to accomplishing such questioned work or incurring excess costs. Changes to this contract can only be made through written modification(s) by the Contracting Officer.

ARTICLE VII - NOTICE OF DELAYS TO THE GOVERNMENT

1. In the event the contractor encounters difficulty in meeting with the performance requirements of when he anticipates difficulty in complying with the contract delivery schedule or date, or whenever the contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately notify the Contracting Officer and the COTR, in writing, giving pertinent details; provided, however, that this date shall not be construed as a waiver by the Government of any delivery schedule or date or of any rights or remedies provided by law or under this contract.

ARTICLE VIII - RIGHTS AND DATA - SPECIAL WORKS CLAUSE

1. The contractor shall not publish or disseminate any data obtained, or information resulting from work pursuant to this contract, without prior written approval of the Contracting Officer.

2. The term "data" as used herein means recorded information regardless of form or characteristics, such as writing, audio-visual works, sound recording, or other works or reproductions, drawings or other graphic representation, and works of similar nature (whether or not copyrighted) which are to be delivered under this contract. The term includes data such as management studies data produced under support service contracts but does not include financial reports, cost analysis, and other information incidental to contract administration.

3. All data first produced or composed in the course of or under this contract shall be the sole property of the Government. Except with the prior written permission of the Contracting Officer, the contractor agrees not to assert any rights at common law or in equity or establish any claims or statutory copyright in such data and warns that anyone who authors such data shall have agreed, in writing, to the same. The contractor shall not publish or reproduce such data in whole or in part or in any manner or form, or authorize others to do so, without the written consent of the Contracting Officer until such time as the Government may have released such data to the public.

4. The contractor hereby grants to or will obtain from the Government, a non-exclusive, irrevocable, royalty-free license throughout the world (a) to publish, exhibit, translate, reproduce, deliver, perform, use and dispose of, in any manner, any and all data which are not first produced or composed in the performance of this contract; and (b) to authorize others to do so as provided in (a) of this Paragraph (4).

5. The contractor shall indemnify and save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, (a) for violation of proprietary rights, copyrights, or rights of privacy, use or disposition of any data furnished under this contract; or (b) based upon libelous, defamatory, or other unlawful material furnished to the contract by the Government and incorporated in data furnished under this contract.

6. Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other rights otherwise granted to the Government under any patent.

ARTICLE IX - APPROPRIATIONS CONTINGENCY CLAUSE

The terms and conditions of this agreement are subject, in their entirety, to the availability of appropriations for Fiscal Year 1986. In the event of a continuing resolution both the period of this agreement and the total funds to be considered committed under it will be in accordance with the length of the initial, and any subsequent, continuing resolution passed by the Congress of the United States which impacts upon the Navajo and Hopi Indian Relocation Commission.

ARTICLE X - ORDER OF PRECEDENCE

In the event of any inconsistency between provisions of this contract, the inconsistencies shall be resolved by giving precedence in the following order:

1. The Scope of Contract Articles I through X.

2. General Provisions here attached.

ARTICLE XI - CONTRACTUAL CONTENTS

1. Award/Contract - Standard Form 26;

2. Contract Schedule - Articles I through X.

3. General Provisions here attached.

STANDARD FORM JULY 1966
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

AWARD/CONTRACT

PAGE 1 OF 1

1. CONTRACT (Proc. Inst. Ident.) NO. Vdr #13
2. EFFECTIVE DATE 10-1-85
3. REQUISITION/PURCHASE REQUEST/PROJECT NO. 13/60-08
4. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1 RATING:

5. ISSUED BY CODE
Navajo-Hopi Indian Relocation Commission
P. O. Box KK
Flagstaff, AZ 86002

6. ADMINISTERED BY (If other than block 5) CODE

7. DELIVERY
☐ FOR DESTINATION
☐ OTHER (See below)

8. CONTRACTOR NAME AND ADDRESS (Street, city, county, State, and ZIP code) CODE FACILITY CODE
E. Susan Crystal
6726 Puget Beach Drive
Olympia, WA 98506

9. DISCOUNT FOR PROMPT PAYMENT

10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK

11. SHIP TO/MARK FOR CODE

12. PAYMENT WILL BE MADE BY CODE
Navajo-Hopi Indian Relocation Commission
P. O. Box KK
Flagstaff, AZ 86002
ATTN: Michael J. McAlister

13. THIS PROCUREMENT WAS ☐ ADVERTISED, ☒ NEGOTIATED, PURSUANT TO:
☐ 10 U.S.C. 2304 (a)( )
☒ 41 U.S.C. 252 (c)( )

14. ACCOUNTING AND APPROPRIATION DATA
48X612252

15. ITEM NO	16. SUPPLIES/SERVICES	17. QUANTITY	18. UNIT	19. UNIT PRICE	20. AMOUNT
	Legal services in accordance with attached scope of work and general provisions.				
	Consulting fees not to exceed 180 day or 3 weeks per month during the contract period unless otherwise requested.				$45,000
	Travel expenses consisting of one round trip airline ticket per month from the Contractor's residence to Flagstaff, AZ plus per diem costs as follows: $11,700 (per diem) 3,672 (air fare) 4,680 (rental car) $20,052				$20,052

21. TOTAL AMOUNT OF CONTRACT $ 65,052

CONTRACTING OFFICER WILL COMPLETE BLOCK 22 OR 26 AS APPLICABLE

22. ☒ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 2 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

26. ☐ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number ______________, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

23. NAME OF CONTRACTOR
BY E. Susan Crystal
(Signature of person authorized to sign)

24. NAME AND TITLE OF SIGNER (Type or print)
E. Susan Crystal

25. DATE SIGNED
10-1-85

27. UNITED STATES OF AMERICA
BY Michael J. McAlister
(Signature of Contracting Officer)

28. NAME OF CONTRACTING OFFICER (Type or print)
Michael J. McAlister

29. DATE SIGNED
10-1-85

26-103

* U.S. GOVERNMENT PRINTING OFFICE : 1977 O - 351-579 (7327)

ARTICLE I - SCOPE OF WORK

The contractor shall provide professional services as follows:

1. Provide a full range of legal analysis and research associated with the processing of eligibility and other appeals. Will advise the Commission in areas of general administrative law and procedures. Upon request, contractor will undertake specialized legal research in the areas of legislative proposals relative to land exchange, land acquisition and ongoing monitoring of the Relocation Program.

2. Provide written summaries covering all findings from requirements assigned pursuant to paragraph one.

3. Will participate in developing legislative and authorization recommendations in support of the New Lands Development Program.

4. Any other such legal inquiries, negotiations or representatives as may be assigned by the Commissioners in the furtherance of P.L. 96-305.

ARTICLE II - GOVERNMENT SUPPLIED SERVICES

The Commission will supply all needed clerical assistance for the preparation of written reports.

ARTICLE III - TERM OF CONTRACT

1. The period of this contract shall commence on 10-1-85 and continue through 9-30-86.

2. If at any point in time the presence of the Contractor is requested on a full-time basis the Contractor will have the first option to accept or reject this request. It is understood by both parties that the Contractor may elect to terminate the contract without damage to either party in lieu of becoming full-time.

3. In the event that the Contractor accepts a full-time contract there will be two potential alternatives for reimbursement:

    1) An annual contract fee of $50,000 + a 15 percent administrative fee for overhead with no travel and per diem allowed;

    2) A full-time staff position.

ARTICLE IV - METHOD OF PAYMENT

1. The contractor shall be paid as follows:

BEST COPY AVAILABLE

a. $250.00 for each day spent in the actual accomplishment of the contracted services.

b. Travel from the Contractor's permanent residence to Flagstaff, Arizona will be limited to one round trip per month.

c. In the event that travel and work occur on the same day, the work day rate shall be billed, if not, no billing will be made for travel days.

d. Travel expenses in accordance with existing federal travel regulations for the geographic area of performance of service to include a rental vehicle for transportation to and from place of performance of services.

e. Invoices from the subcontractor shall accompany any invoices the Contractor submits to the Commission for subcontract services.

2. Monthly invoices shall be submitted detailing the number of days spent in conjunction with Article IV, Paragraph 1, to include date, location of activity and all other pertinent data and a travel claim detailing and documenting travel expenses in accordance with Article IV, Paragraph 1, (d).

Invoices shall be submitted to:

Navajo and Hopi Indian Relocation Commission
P.O. Box KK
Flagstaff, Arizona 86002
Attn: Anna L. Hernandez

ARTICLE V - TYPE OF CONTRACT

1. This is a daily rate consultant type contract in accordance with 1-3.406-2 and 1-3.204, Title 41, Code of Federal Regulations.

ARTICLE VI - TECHNICAL DIRECTION

1. The performance of work required herein shall be subject to the technical direction of the assigned Contracting Officer's Technical Representative (COTR) named herein below or his designee(s).

2. As used herein, "technical direction" is direction to the contractor which requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the contractual statement of work. The technical direction to be valid:

a. Must be issued in writing consistent with the general scope of work set forth in the contract;

b. May not constitute new assignment of work or changes to the expressed terms, conditions, or specifications incorporated into this contract, and,

c. Shall not constitute a basis for extension of the contract-delivery schedule

3. Nothing contained in this article authorizes the contractor to incur costs in excess of the estimated cost or other limitations of funds set forth in this contract document.

4. The COTR assigned to this contract is:

Christopher Bavasi
Navajo and Hopi Indian Relocation Commission
P.O. Box KK
Flagstaff, Arizona 86002

ARTICLE VII - CONTRACTING OFFICER AUTHORITY

1. Only the Contracting Officer can legally bind the Government to any changes under this contract and commit the Government to the expenditure of funds. The performance of work required under this contract shall be subject to the supervision of the COTR shown in Article VI. Neither this individual nor any other technical representative of the Government can authorize a change in the Scope of Work or the incurrence of cost in excess of the amount of the funds allotted to this contract. If there are any doubts in this regard, contact the Contracting Officer prior to accomplishing such questioned work or incurring excess costs. Changes to this contract can only be made through written modification(s) by the Contracting Officer.

ARTICLE VIII - NOTICE OF DELAYS TO THE GOVERNMENT

1. In the event the contractor encounters difficulty in meeting performance requirements or when he anticipates difficulty in complying with the contract delivery schedule or date, or whenever the contractor has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately notify the Contracting Officer and the COTR, in writing, giving pertinent details; provided, however, that this date shall not be construed as a waiver by the Government of any delivery schedule or date or of any rights or remedies provided by law or under this contract.

ARTICLE IX - RIGHTS AND DATA - SPECIAL WORKS CLAUSE

1. The contractor shall not publish or disseminate any data obtained or information resulting from work pursuant to this contract, without prior written approval of the Contracting Officer.

2. The terms "data" as used herein means recorded information regardless of form or characteristics, such as writing, audio-visual works, sound recording, or other works or reproductions, drawings or other graphic representation, and works of similar nature (whether or not copyrighted) which are to be delivered under this contract. The term includes data such as management studies data produced under support service contracts but does not include financial reports, cost analysis, and other information incidental to contract administration.

3. All data first produced or composed in the course of or under this contract shall be the sole property of the Government. Except with prior written permission of the Contracting Officer, the contractor agrees not to assert any rights at common law or in equity or establish any claims to statutory copyright in such data and warns that anyone who authors such data will have agreed, in writing, to the same. The contractor shall not publish or reproduce such data in whole or in part or in any manner or form or authorize others to do so, without the written consent of the Contracting Officer until such time as the Government may have released such data to the public.

4. The contractor hereby grants to or will obtain from the Government, a non-exclusive, irrevocable, royalty-free license throughout the world (1) to publish, exhibit, translate, reproduce, deliver, perform, use and dispose of, in any manner, any and all data which are not first produced and composed in the performance of this contract; and (2) to authorize others to do so as provided in (1) of this paragraph (4).

5. The contractor shall indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or rights of privacy, arising out of public translation, reproduction, delivery, performance, use, or disposition of any data furnished under this contract; or (2) based upon any libelous, defamatory, or other unlawful material furnished to the contractor by the Government and incorporated in data furnished under this contract.

6. Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.

ARTICLE X - APPROPRIATIONS CONTINGENCY CLAUSE

The terms and conditions of this agreement are subject, in their entirety, to the availability of appropriations for Fiscal Year 1986. In the event of a continuing resolution both the period of this agreement and the total funds to be considered committed under it will be in accordance with the length of the initial, and any subsequent, continuing resolution passed by the Congress of the United States which impacts upon the Navajo and Hopi Indian Relocation Commission.

ARTICLE XI - ORDER OF PRECEDENCE

In the event of any inconsistency between provisions of this contract, the inconsistencies shall be resolved by giving precedence in the following order:

1. Contract Schedule Articles I thru XI.

2. General Provisions attached hereto.

ARTICLE XII - CONTRACTUAL CONTENTS

1. Award/Contract - Standard Form 26;

2. Contract schedule - Articles I through XI.

3. General Provisions attached hereto.

Mr. CRAFT. Both Sue Crystal and my firm, Mr. Chairman, are on a contract with the Commission.

Mr. YATES. Is Sue Crystal paid in addition to Craft and Loesch?

Mr. WATKINS. Yes.

Mr. YATES. How much does Sue Crystal get, $54,000?

Mr. WATKINS. Per year.

Mr. CRAFT. It is an annual contract, Mr. Chairman.

Mr. YATES. Is yours the same contract that she has?

Mr. CRAFT. She and I have similar contracts assigned to do different things, Mr. Chairman.

Mr. YATES. What is it you do? Are you a lobbyist for the Commission?

Mr. CRAFT. As you know, appropriated funds cannot be used to lobby.

Mr. YATES. I know that. That is why I asked the question.

Mr. CRAFT. We have three lawyers who have been dealing with and providing services to the Relocation Commission since 1982. Sue Crystal, who is on a contract, and my law firm. My law firm includes Mr. Loesch and me. We have provided services to the Relocation Commission in terms of liaisoning with the Department of the Interior and with other branches of the administration, as well as with the Congress.

We have provided information and transmitted information back and forth. We have provided numerous services to the Relocation Commission since 1982. If I could, Mr. Chairman, of all the contracts that we have, this is the least that we charge anybody and the reason I suppose that we may be involved is both Mr. Loesch, who is the minority counsel for the Senate Interior Committee. When the bill passed in 1974, I was his deputy.

I previously was a Deputy Under Secretary at the Department of the Interior, and then I subsequently, between 1976 and 1979, was the chief counsel for the minority on the Senate Interior Committee, the Senate Energy Committee. So both of us participated in the original drafting of the 1974 Act, and we have provided services at the request of the Relocation Commission to the Relocation Commission 1982.

Mr. YATES. Why does the Commission need a Washington lawyer?

Mr. CRAFT. Many of the things, Mr. Chairman, that had been provided to the Relocation Commission take place in Washington and meetings at the Department of the Interior, meetings at other Federal agencies. It saves the Relocation Commission enormous transportation, as well as providing this background of a continuity of legislative knowledge which Mr. Loesch and I have been involved in since 1970—actually 1972.

As you know, the statute——

Mr. YATES. Who handles the legislative work out in Phoenix? Excuse me, who handles the legal work out in Arizona?

Mr. WATKINS. Sue Crystal on appeals. She is very busy.

Mr. YATES. Now she gets paid $30 an hour. Or does she get a salary?

Mr. MCALISTER. She is on a daily contract, Mr. Chairman. I believe the daily rate is $250 a day.

Mr. **Yates**. $250 a day?

Mr. **McAlister**. Yes, sir.

Mr. **Yates**. That is a pretty good salary, isn't it?

Mr. **Kraft**. Mr. Chairman, there are enormous legal issues involved, not only are you hearing today from Santa Fe, which has a problem with regard to the surface minerals. Those are issues which we have worked on. There are issues of the legality of the contracts that we sign and what the Federal Government's liability is to people who have signed contracts.

Mr. **Yates**. What is your relationship to the Solicitors Office, any?

Mr. **Atkinson**. Mr. Chairman, we really don't have any relationship except on a very minor, minor——

[Recess.]

SETTLEMENT POSSIBILITIES

Mr. **Yates**. Ms. Reporter, in addition to the statement by Mr. Muys, there are attachments which may go into the record as part of that presentation. I asked Chairman Zah whether you made a deal.

Mr. **Sidney**. No, I think we are further apart.

Mr. **Yates**. Are you further apart? I didn't think that was possible.

Mr. **Sidney**. We will see how this meeting goes.

Mr. **Yates**. This meeting isn't going to go on much longer because I think we have had our oversight hearing. I think we had better wait for the budget aspect of the hearing. Had you completed your statement?

Mr. **Watkins**. No, sir, I hadn't. May he respond about the attorneys very quickly, because he was there when they were both hired. He would like to respond to that.

Mr. **Yates**. I think we had better leave that for the budget hearing.

Mr. **Watkins**. Fine. You are the chairman.

Mr. **Yates**. He will go into all your expenses at that time.

COMPLETION OF COMMISSION'S STATEMENT

Mr. **Watkins**. Fine. Finishing up the statement, a number of factors spurned us on. We have been told by the attorneys of the Justice Department as well as our own counsel that the Federal Government's pecuniary liability would be enormously greater if the Government did not make some good faith effort during the period before the deadline to actually accomplish the mandate of the statute.

We were told that the Hopi Tribe may have a cause of action for money damages against the Federal Government for failure to meet the statutory deadline. We were also informed that the money damage amount could run in the hundreds of millions of dollars and those funds, of course, would be in addition to the some $84 million which has been spent since 1974 on this program.

Likewise, the prospect of business as usual frightened us with regard to the total dollars estimated, and the number of additional years to complete the commitment. With this as a background, we expressed our strong opinion to Members of Congress that would listen, that we believed it would be better for the Federal Government to allocate now the necessary resources to build or acquire the replacement homes, which we have promised by contract, as fast as possible, even though the statutory deadline could not be met.

This prompted the $68 million that was contained in the Senate version of the fiscal year 1986 Interior Appropriations Bill. That sum would have allowed the Relocation Commission to fully complete its obligation to each of the families who have, or may by the deadline, volunteer to relocate.

The concept we have been pursuing all along, Mr. Chairman, is to shrink the scope of this problem down to a known quantity. We know that at least 98 percent of the families that have been affected by this unfortunate circumstance have signed contracts evidencing their willingness to relocate at the current level of benefits. The extent of the voluntary relocation is a story which still is not told and not very well understood.

The Relocation Commission has not had sufficient funding on an annual basis to build all of the homes for all of the families that have volunteered to relocate. While we didn't get full funding, we were most pleased that the Congress adopted for fiscal year 1986 a funding level that will allow the combined efforts of the Commission and the BIA to acquire or build replacement homes for the entire 300 families, plus or minus, that are currently residing on the HPL.

After this year, after these homes are built, we will know definitely how many families, if any, will not voluntarily relocate from the Hopi Partitioned Land. We believe it would be imprudent and unwise to adopt a new Federal policy which would scrap relocation prior to the time we relocate all those who have volunteered to move.

I will remind you that the Relocation Commission has a valid, signed contract with families who voluntarily are relocating under this program and should the Federal policy to relocate change, we are concerned that the Federal Government's obligation to build a replacement home would continue. Families holding a contract for a replacement home may be able to sue the Federal Government for a benefit they have been promised, but not delivered.

RELOCATEES REMAINING TO BE MOVED

Mr. YATES. How many such people are there who have voluntarily agreed to relocate and who still have not received their home?

Mr. WATKINS. Fifteen hundred.

Our legal counsels have informed us that it is their belief that a taking may occur. I am informed a unilateral abrogation of such a contract may be construed by a court as a Fifth Amendment taking without due process of law.

Mr. Chairman, with these kinds of considerations, we believe that the appropriated funds for fiscal year 1986 in the sum of $22 million for the Bureau of Indian Affairs and the $15.9 million for the Relocation Commission for housing, is adequate to build or acquire the necessary homes for those that are in the critical Hopi Partitioned Land.

We report to you that we have every expectation that the $15.9 million authorized and appropriated to the Relocation Commission will be utilized fully during fiscal year 1986.

Mr. Chairman, we recite some of these events because we believe it would be most imprudent for the Government——

Mr. **Yates**. Where are you going to put them? You say you have every expectation they will be spent.

Mr. **Watkins**. Yes, sir.

Mr. **Yates**. How do you propose to spend it? Where are you going to build the houses?

Mr. **Craft**. $15.9 million less the Gramm-Rudman, is authorized for the housing for the Commission for fiscal year 1986. We already have families who are awaiting housing.

Mr. **Yates**. That we know, but where are you going to put them?

Mr. **Craft**. Those are for houses off of the new lands, Mr. Chairman. These are for homes that are under the jurisdiction of the Commission. The Commission has authority under the fiscal year 1986 for reservation.

Mr. **Yates**. I know that, but my question is where will you put them?

Mr. **Tessler**. On the Navajo reservation and off the Navajo reservation, as the relocatee wishes.

Mr. **Yates**. Have you the approval of the Navajo Nation to put them on the Navajo reservation?

Mr. **Tessler**. They have provided us with home site leases for many of these people as Chairman Zah stated.

Mr. **Yates**. But I thought no more were to go to the Navajo.

It says here, statement of manager, "Neither the Secretary of the Interior nor the Bureau of Indian Affairs shall grant home site leases on behalf of relocatees onto the existing Navajo reservation."

Now, are you talking about home site leases on the existing reservation?

Mr. **Watkins**. Yes, sir.

Mr. **Yates**. Why did we forbid it then?

Mr. **Craft**. You forbade the Secretary to override the interest of the tribe in granting those, Mr. Chairman. What you tried——

Mr. **Yates**. Neither the Secretary nor the BIA shall grant homesite leases on behalf of relocatees onto the existing reservation.

Mr. **Craft**. That reserves to the tribe the right to grant them as opposed to the Secretary overriding the tribe's authority.

Mr. **Yates**. That is fine. That is what we intended.

Mr. **Craft**. Yes, sir.

HOME SITE LEASES

Mr. **Yates**. Except that was the reason for my question then. Have you agreed to these homesite leases, Mr. Zah?

Mr. **Zah**. As I indicated earlier, this morning, we have during the last several years granted 656 homesite leases to those who want to relocate to the existing Navajo reservation.

Relocation Commission has only used 365 of that. We now have 292 home sites available to those relocatees. I think your question is in order, Mr. Chairman. Your question was where are you going to put those number of people.

Mr. **Yates**. Yes.

Mr. **Zah**. My understanding is they came out with 1,500 awaiting relocation. I can accommodate right now 292, but what will happen to the rest of them? I think that was your question.

POTENTIAL RELOCATION SITES

Mr. **Yates**. Yes. Where are you going to put them? He says he is going to take care of 200 of them. Where are you going to put the rest of them?

Mr. **Watkins**. We will put them wherever they choose to move, Mr. Chairman. If it is new lands, we will put them there. If they want to move to Winslow or Holbrook or Flagstaff, we will put them there.

Mr. **Yates**. I thought the Navajo tried to get land at Winslow and Holbrook, but they were turned down. Is my memory right on that?

Mr. **Watkins**. You are correct, sir. When Chairman Zah came in, they came up with new lands that were not discussed in the previous administration, and the BLM has acquired those lands for them. Those are the ranches.

Ms. **Massetto**. They cannot accommodate the total number of relocatees we have.

Mr. **Yates**. Mr. Zah says he can't accommodate, then you tell me the ranches can't accommodate them. Where are they going to be placed?

Ms. **Massetto**. That is a question that has not been answered.

Mr. **Yates**. How many will——

Mr. **Atkinson**. We are running up against a difference of opinion here. In my opinion, the land and water—good water is an issue, and this is why we have sometimes talked about rural communities. There is no limit to the number of people really that could go on the new lands excepting those who wish to graze.

ECONOMIC OPPORTUNITY

Mr. **Yates**. Where are they going to get jobs?

Ms. **Massetto**. That is the problem. That is our difference of opinion.

Mr. **Yates**. Don't you have to worry about economic opportunities for them under the law?

Ms. **Massetto**. Absolutely. Yes, we do.

Mr. **Yates**. You can't just do what you did in the past.

Ms. **Massetto**. That is correct.

Mr. **Watkins**. Friday I met with the fathers of Winslow, and they were wanting people to come to the area because they had new industry there, and they have jobs for them, and I just met with them Friday, and they are going to come to the Commission and explain to us how many people they need.

That was just Friday I met with people in Winslow. That was Winslow, Arizona. George Metzger was back here to testify on the impact of their community. There are 80 families moved in already, and they are trying to create economic opportunities for them.

We don't know how many more of the new people will move into that area.

Mr. **Yates.** That is the problem because the fact you don't know how many more are going to move in there. I wish the Commission would furnish to the committee a breakdown of where you expect to place these people.

Mr. **Watkins.** Yes, sir.

Ms. **Massetto.** A person's name and site?

Mr. **Yates.** Yes. You have got 1,500, right?

Mr. **Craft.** Mr. Chairman, the statute this year told both BIA and the Commission to focus all of their efforts toward taking care of the people currently residing on the joint use area.

Mr. **Yates.** Let me just state to you what we have heard, and that is that people you are wanting to relocate are looking at what you have done to those who have voluntarily relocated, and are saying if that is what is happening to the voluntary relocatees, why should we relocate? Now, I don't care what our statutes say.

We never intended to compel people to wait in line. I would have thought you would have given greater cooperation to those who voluntarily tried to help you carry out your program. They are the ones who are way behind now. Now, you tell me that your intention, because of what you say the congressional intent was, was to get the people off the lands and that is all you have to worry about.

I don't think that is true. I think you have to worry about all the people, and I am trying to find out now where you are going to put the people who have voluntarily relocated, the ones who have had this very dirty deal up to the present time.

Mr. **Tessler.** Mr. Chairman, to date about 60 percent of our relocatees have relocated on reservations; 40 percent off. With the new lands available as a factor, I believe the percentage will continue to be higher on reservation. Our trend has been a higher percentage on reservation.

Mr. **Yates.** What do you mean by on reservation? We just heard what Mr. Zah said. He said he has only got room for 200.

Mr. **Tessler.** In spite of that, Mr. Chairman, many people wish to move off. Many are employed in nearby reservation communities where they have been for quite some time.

Mr. **Yates.** We could go on and on this way. I think you had better give me the breakdown you requested. You want to finish your statement?

Mr. **Watkins.** It is very short.

Mr. **Yates.** How much more do you have? I will put your statement in the record.

Mr. **Watkins.** Why don't we just put it in the record.

Mr. **Yates.** All right, that is fine.

[The statement of Mr. Watkins follows:]

STATEMENT BY MR. RALPH A. WATKINS, JR.
CHAIRMAN, NAVAJO & HOPI INDIAN RELOCATION COMMISSION

BEFORE THE
SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES
THE HONORABLE SIDNEY R. YATES, CHAIRMAN

FEBRUARY 4, 1986

Mr. Chairman, we welcome this opportunity to appear before you today and share with you some thoughts that we have been desirous of communicating to you since the last time we appeared before this committee in regard to the Commission's FY '86 appropriation. As your staff has undoubtedly informed you, the Commission has been quite active during 1985 urging both the Administration and the Congress to take extraordinary efforts to aid the Commission so that it might accomplish the relocation of the remaining families occupying the Hopi Partitioned Land by the statutory deadline of July 6, 1986 or provide a realistic alternative.

For some six months we played a behind-the-scenes role in doing everything within our power to make the Clark mission a success. Everyone was hopeful that the two tribes would be able to come to some accommodation among themselves through the good offices of Former Secretary of Interior Clark. The Commission recognized that, regardless of the progress of the Clark mission, the statutory deadline would not be changed unless the Congress acted. We were very concerned that only one legislative vehicle was available to accomplish any change before the statutory deadline. We privately informed both the Congress and the Administration that, without additional resources, the federal committment to build or acquire a replacement home for each family found eligible could not be accomplished within the alloted time. As the deadline neared, we also knew that unless we got sufficient resources to undertake a massive effort to complete home acquisitions, the relocation process would be stretched out many more years. Building or acquiring the requisite number of houses in this time frame became impossible. So in consultation with members of the House and Senate, we explored other options that included a proposal that would have allowed the Relocation Commission to make cash equivalency payments to not only the families residing on the Hopi Partitioned Land, but all that have been adjudged eligible. This would have allowed us to conclude the work of the Commission and be out of business shortly after the deadline. You will recall that for several years now the Appropriations Committees of the House and Senate have restricted Commission funds for use primarily for the relocation of families still on the Joint Use Area. We raised the question of whether there was political support on Capitol Hill to allow us to translate the current average level of benefit into cash. The concept was to offer that cash as an equivalency in order to induce the families remaining on the Hopi Partitioned Land to leave by the deadline. We felt that there was a good possibility that the families that were still occupying the Hopi Partitioned Land--some 300--might accept this incentive. We offered to broker this option if Judge Clark were interested in having this as one of his potential solutions. We informed Dick Morris, Judge Clark's principal agent, that we were operating on a very short fuse; the FY '86 Continuing Resolution was the only available legislative vehicle that could carry the legislative changes that would be necessary if cash equivalency was to be implemented. After more difficult months of behind-the-scenes negotiations with members of the Administration and the Congress, we were convinced that, in this era of Gramm-Rudman, it would be most difficult to succeed with this strategy. Our selling points were simple. It would save the taxpayers money, fulfill the U.S. Government's solemn contractual obligation, avoid the possibility of hundreds of millions of additional taxpayer dollars being awarded by a federal court for failure to meet the deadline, put the Relocation Commission out of business, and most importantly, resolve the uncertainty and anguish for hundreds of our Native American families. Attached to my statement today I have a breakdown of the estimate of the comparison of the cost between this cash equivalency concept and the continuation of the status quo program, that would have taken us to 1993. We informed the Congress that we felt we could save the taxpayers some $100 million if we adopted a cash equivalency payment. I want to point out that the cash equivalency concept would have also applied to the class of relocatees who complied with the law and removed themselves from the area of controversy. They have been awaiting benefits promised to them and the federal government has a contractual obligation to them. Some of these families have been waiting since 1974 or early 1975.

We undertook the cash equivalency proposal as a serious endeavor to find another route to accomplish the relocation by the statutory deadline. It is our fondest hope and was then, to put the Relocation Commission out of business permanently. Following the payment to those families that were willing to take a cash equivalency, the Relocation Commission would have turned over any ongoing responsibility to the families involved to existing governmental agencies that traditionally have that responsibility, such as the Bureau of Indian Affairs and the Indian Health Service.

Mr. Chairman, once we realized we were not going to be successful with the cash equivalency concept, we turned our attention to trying to convince the Administration and members of Congress that something had to be done in order to avoid or minimize the problems we envisioned when the July '86 deadline was not met. A number of factors spurned us on. We have been told by attorneys at the Justice Department, as well as our own counsel, that the federal government's pecuniary liability would be enormously greater if the government did not make some good faith effort during the period before the deadline to actually accomplish the mandate of the statute. We were told that the Hopi Tribe may have a cause of action for money damages against the federal government for failure to meet the statutory deadline. We were also informed that the money damage amount could run in the hundreds of millions of dollars and those funds, of course, would be in addition to the some $84 million which has been spent since 1974 on this program. Likewise, the prospect of business as usual frightened us with regard to the total dollars estimated and the number of additional years to complete the committment. With this as a background, we expressed our strong opinion to Members of Congress that would listen, that we believed it would be better for the federal government to allocate now the necessary resources to build or acquire the replacement homes, which we have promised by contract, as fast as possible, even though the statutory deadline could not be met. This prompted the $68 million that was contained in the Senate version of the FY '86 Interior Appropriation Bill. That sum would have allowed the Relocation Commission to fully complete its obligation to each of the families who have, or may by the deadline, volunteer to relocate.

The concept we have been pursuing all along, Mr. Chairman, is to shrink the scope of this problem down to a known quantity. We know that at least 98% of the families that have been affected by this unfortunate circumstance have signed contracts evidencing their willingness to relocate at the current level of benefits. The extent of the voluntary relocation is a story which still is not told and not very well understood. The Relocation Commission has not had sufficient funding on an annual basis to build all of the homes for all of the families that have volunteered to relocate. While we didn't get full funding, we were most pleased that the Congress adopted for FY '86 a funding level that will allow the combined efforts of the Commission and the BIA to acquire or build replacement homes for the entire 300 families, plus or minus, that are currently residing on the HPL. After this year, after these homes are built, we will know definitely how many families, if any, will not voluntarily relocate from the Hopi Partitioned Land . We believe it would be imprudent and unwise to adopt a new federal policy which would scrap relocation prior to the time we relocate all those who have volunteered to move. I will remind you that the Relocation Commission has a valid, signed contract with families who voluntarily are relocating under this program and should the federal policy to relocate change, we are concerned that the federal government's obligation to build a replacement home would continue. Families holding a contract for a replacement home may be able to sue the federal government for a benefit they have been promised, but not delivered. Our legal counsels have informed us that it is their belief that a taking may occur. I am informed a unilateral abrogation of such a contract may be construed by a court as a Fifth Amendment taking without due process of law.

Mr. Chairman, with these kinds of considerations, we believe that the appropriated funds for FY '86 in the sum of $22 million for the Bureau of Indian Affairs and the $15.9 million for the Relocation Commission for housing, is adequate to build or acquire the necessary homes for those that are in the critical Hopi Partitioned Land. We report to you now that we have every expectation that the $15.9 million authorized and appropriated to the Relocation Commission will be utilized fully during FY '86.

Mr. Chairman, we recite some of these events because we believe it would be most imprudent for the government to rescind or defer the $22 million housing acquisition program of the Bureau of Indian Affairs for FY '86. If that action were to occur, we would not be able to build a replacement home or have a replacement home acquired for all of the families currently residing on Hopi Partitioned Land. The language which you imposed in the FY '86 Continuing Resolution, which allow a family that has applied for benefits but have not received those benefits to remain on the Hopi Partitioned Land pending the completion of their home, will mean that those families will have to remain longer than would have been the case if the FY '86 funds were available. Mr. Chairman, some families have been waiting for many years now for the federal government to make good on its committment to provide a replacement home. We believe, Mr. Chairman, it unfair, to say the least, to perpetuate the uncertainty for these families by not completing the building or acquisition of these replacement homes.

Mr. Chairman, we know of your concern for the welfare of those involved in this unfortunate circumstance. The statute dictates the type and extent of the assistance this Relocation Commission can render. We are prepared to carry out that assistance within the guidelines that have been set by the Congress, but, without the necessary financial wherewithal, this Relocation Commission cannot get the job done and it will stay in business and the problem will perpetuate itself and grow worse. Substantial progress has been made; out of the some 2600 families originally affected, at least 907 have already received their replacement home. Mr. Chairman, 1215 families no longer reside on the Hopi Partitioned Land. They are eligible for benefits, but we haven't the funds to provide them yet. We believe that out of the some 300 families that reside on the Hopi Partitioned Land, only some 40 to 60 families may not be willing to relocate. If that be the case, then address that issue when we know the facts. We are committed to getting the job done just as close to this deadline as humanly possible, and ask for your aid and assistance as well as your understanding as we prepare to conclude what we hope is the last chapter in this drama which has been unfolding since at least 1865.

July 17, 1985

CONFIDENTIAL DRAFT

A PROPOSED COMPROMISE OF THE RELOCATION AND LAND ACQUISITION ASPECTS OF THE NAVAJO-HOPI INDIAN SETTLEMENT

The following points would be part of a package which could be submitted to the Congress for consideration during the appropriation process and if passed would affect the settlement act of 1974 as amended. This proposal addresses two outstanding facets of the overall dispute between the Navajo and Hopi.

First, it resolves the issue of the Navajos residing on the Hopi partitioned land who are required under the Relocation Act to be resettled by July 7, 1986.

Second, it deals with the Big Mountain area residents who have indicated their refusal to comply with the Relocation Act.

The following are the basic provisions which would be included in the package;

1. As of July 1985 there are approximately 378 Navajo families currently residing in Hopi Partitioned Land (HPL). 318 of these families have agreed to relocate and have been certified by the Commission as entitled to the current level of benefits provided by the law. Budget constraints are the primary reason these families have not yet moved from the HPL. In order to cause an immediate movement of these families, the Congress would authorize the Relocation Commission to pay each family $75,000 in cash which is the cash equivalent of the housing and moving costs to which they are already entitled. This one time cash payment would be in lieu of all housing and other benefits.

   $15,690,000 is already budgeted for FY 86; 210 families could be moved with this money. These families would receive the cash benefit in lieu of a house. The Congress at a maximum, would only have to appropriate $12.6 million more, in order to complete the move of the remaining 168 families that would then live on the HPL.

   The budget savings is considerable considering the $20.3 million expended in FY 85 and the fact there will be only minor administration cost, if any, in FY 87 and none beyond FY 1987.

2. Provide an exception to those in the Big Mountain area by allowing those who within 60 days of passage hereof formally notify the Relocation Commission that they will not accept the 75,000 dollar payment for relocation, to remain as permanent residents of the Big Mountain area.

3. Mandate a fair market value appraisal to be done by the Relocation Commission with the dollar amount fixed by this process and compensate the Hopi Tribe with a fixed dollar amount remuneration for loss of that portion of the Hopi partitioned land. Such land would become part of the Navajo Reservation.

4. Require that all other Indians previously adjudged eligible for relocation benefits present their eligibility to the Claims Court for a cash compensation under the Act.

5. Terminate the Navajo-Hopi Indian Relocation Commission within 180 days of passage, and transfer any residual responsibilities to the relocatees that are commensurate with the trust responsibility of the Secretary of the Interior, to the Department of Interior.

This proposal is a very narrow fix for the problems of relocation of Indians and the tremendous financial burden on the Congress for funding the activities of the Relocation Commission. This resolves the question of who moves and by what time as well as the total extent of the financial commitment necessary to resolve these questions. It would fix in time the legal financial obligation of the Federal Government to the relocatees and insure that the Commission relocation program does not continue to grow in terms of dollar commitments as well as scope of activities. It transfers to permanent agencies the responsibility for continuity of efforts to aid and assist Indians.

This proposed solution avoids the potential for a Contempt of Court citation against the Commission and/or the Secretary which would occur if Hopi partitioned land Navajos are not relocated by the deadline. This also avoids the possibility of the Court awarding money damages for failure to meet the statutory deadline for relocation. It is a less costly method to terminate the relocation process by this means than to continue to have the Relocation Commission in business for another some 10 years.

This proposed solution is not meant to solve all of the outstanding problems that exist between the two Tribes. It only addresses the question of the people relocation problem and the extent to which the Federal Government has an obligation to those physically relocated. It also addresses the narrow question of exempting the Navajos who reside in the Big Mountain area. Senator Goldwater has made a commitment to the Big Mountain people that they would not have to move in the relocation process.

Adoption of this proposal would also remove the Relocation Commission from a potential contempt of Court and obviates the question of whether the Secretary of Interior has been a party to forced relocation, a potential breach of his fiduciary responsibility to the Indians.

COST COMPARISONS

This chart compares the known cost of the Relocation Program from 1985 to 1993 as contained in testimony to the Congressional Appropriation Committees with the Cost of this proposed compromise.

Compromise Proposal (Cash)		1985-1993 Program (Homes)	
28.350 MM	378 families x 75,000	28.350	378 families
91.125 MM	1215 families x 75,000	91.125-1215 families	
6 MM	Operating & administrative costs	50 MM	Operating & administrative costs
10 MM	Compensation for loss of Big Mountain Land	28.2 MM	Off Reservation improvements
		37 MM	Existing Res. Improvements
$135.47 MM	Total	$234.67 MM	Total

Of course the Commission has spend 84 million through FY 85 with the major cost yet to come and the comparison does not demonstrate the savings to the government for avoiding money damages and the embarrassment of a contempt proceeding, both of which will surely occur if the July 1986 deadline is not met. This proposal is a 100 million savings from the status quo.

Mr. **Yates**. Did you want to say something, Ms. Massetto?

Ms. **Massetto**. I lost my train of thought. I'm sorry.

CONGRESSIONAL INTENT ON PRIORITIES

Mr. **Yates**. I would like to say for the record, I don't agree with Mr. Craft, with his constructions of what our intention was.

The language that was used to insure a priority for the use of funds to be given to Navajo families who are actual physical residents of Hopi Partitioned Lands on the date of enactment here of—to expedite relocations and construction under this proviso.

That did not mean that there was not to be the same kind of priority attention given to those who had been voluntary relocatees, and it would seem to me who would be entitled to much greater contribution than those who were resisting the relocation or who were tardy in the relocation.

The ones who are more cooperative are being penalized here, and I think that is unfortunate. Certainly it wasn't our intention to do that. Now Ms. Massetto, I have restored your train of thought.

Ms. **Massetto**. Thank you.

Mr. Chairman, I just did sort of a manual analysis of the time applied. Time determined and those awaiting, how long they have been awaiting and there have been six relocatees that have waited nine years, 225 that have waited eight years, 95 that have waited seven, 213 that have waited six, and 307 that have waited five years.

Mr. **Yates**. Why have they waited all that time?

Ms. **Massetto**. There is a variety of reasons why they were not certified. One, I believe, is the fact that there was lack of information—Mr. Tessler will know—lack of information in their file, which may or may not have been a lack of aggressiveness on the part of the Commission. I can't answer that.

We had a change in regulations, and there was a long time between when people were certified and when they applied, and finally were certified, so there was a gap in time.

This is more than half of our certified relocatees.

Mr. **Yates**. Who haven't yet been placed.

Ms. **Massetto**. That is correct.

Mr. **Yates**. Now, where are they going to be placed, Ms. Massetto?

Ms. **Massetto**. I know that—I think that those who are currently residing or domiciled out on a JUA will have a chance for a new home on the new lands. Maybe some of their family members will, too, but the new lands and the present economic conditions and the present other conditions up in northern Arizona, I don't see more than 400 to 500 families really moving out there, unless we go to the rural subdivision, which I am totally opposed to.

RURAL COMMUNITY PLAN

Mr. **Yates**. What do you mean by the rural subdivision?

Ms. **Massetto**. I mean five-acre lots, contiguous.

Mr. **Yates**. Who is advocating that?

Ms. **Massetto**. The majority of the Commission, I think.

Mr. **Yates**. Is that correct, Mr. Watkins?

Mr. Watkins. No, sir. We have never made any definite plans. CH2M Hill has made a presentation to us. She was there when the presentation was made. The Commission has made no decision on that.

Ms. Massetto. I think Mr. McAlister's testimony was this morning, last week in a private meeting in Phoenix, the Commission okayed a rural community for at least 200 people.

Mr. Yates. That is the way I understood Mr. McAlister's testimony to be. Is that different than Mr. Watkins' statement now?

NEW LANDS PLANNING

Mr. McAlister. The approval for the plan has gone forward, Mr. Chairman. The approval of the Commission for the planning for CH2M Hill to go forward with the actual surveying of the perimeter of that community——

Mr. Yates. Of the rural subdivision?

Mr. McAlister. We are calling it a rural community, yes, has gone forward. It has to be phased at about 40 units at a time, because we don't know what the demand is going to be for that setting.

Some of the relocatees, some of the younger "inculturated" folks have indicated a desire for that kind of setting, but we don't know what percentage.

Mr. Yates. They have or have not?

Mr. McAlister. They have.

Mr. Yates. To whom have they indicated this?

Mr. McAlister. Our staff, to the planners, to Mr. Varner, who is on our staff, to Mr. Norstarg and to Mr. Peters, of CH2M Hill.

Mr. Yates. Does that mean you know who among the relocatees is willing to go out to your rural community?

Mr. McAlister. No. As far as specific names—and this is a question, by the way, that Ms. Massetto asked a moment ago when you asked us where is everybody going to be moving, if you are saying a name to a parcel number, that has not been done.

Mr. Yates. Shouldn't that be done?

Mr. McAlister. Eventually, yes, sir, it has to be done.

Ms. Massetto. Mr. Swimmer can't build a house until that is done.

Mr. McAlister. That is correct. If I might continue?

Mr. Yates. Mr. McAlister, you may continue.

GRAZING PERMITS

Mr. McAlister. The plan as it stands presently acknowledges that the pivotal issue is the grazing permits. Up to this point in time, there has been a first come, first serve basis. By the way, I believe you are talking about the application dates, Ms. Massetto, and not the certified dates.

Ms. Massetto. I am talking about both. I know what I am talking about.

Mr. Yates. Go ahead.

Mr. McAlister. And unlike the eventual total eligibility figures, regardless of whether there is agreement or disagreement over the legal interpretations over the years as to who should and shouldn't be eligible, there was never a top land on that figure, and it lent itself—obviously, there may be a great deal of discretion about how well it lent itself, but it did lend itself to a first come, first serve basis, or one-to-one counseling and placement.

It is clear to all of the counseling and certification staff at the agency, as well as the planners, that before anything can be done—part of the plan we are submitting to you February 15 we must have an opportunity for any and everybody who wishes to apply for a grazing permit to have that time frame, and then close it.

We can't start awarding permits until we know what the total population is because—or the number of people who are going to apply, because it has to be done on a priority basis.

We know there are more desiring grazing than the lands will support. It is just that simple. So that the process you are asking about has several phases; one, the permits. The regs that were proposed several months ago, and held up by the OMB because of this pending legislation, which took specifically the homesite lease process and the rights-of-way out, gave them to BIA, they were kicked back from OMB, and asked to withdraw them because of the pending language.

It has left the grazing permitting process in limbo. It did not give it to BIA or specifically give it to the Commission.

At any rate, reverting to what I was going to say regarding permits. Our folks, who are on the ground and out in the field, estimate on an average, there will be three or four eligible heads of household, per permittee, who will not be eligible for a grazing permit.

We have the older family member on the HPL who was a resident in 1974, had a grazing permit, and is still a resident, and we have the younger members of that family, of that camp who have subsequently moved off. The 1200 we have been talking about.

The plan anticipates at this point maximizing the cluster homesite and grazing approach. The permitees will be the key to that. Once the permitees are established, they can have the extended family members move with them to those clusters and the process then falls out of its own accord.

Once all of the permits are given, once the number of heads of household who want to move are given, it is a process of elimination and priority.

Mr. **Yates**. Is your use of the word "cluster" another word for rural settlement?

Mr. **McAlister**. No, sir. There are actually three cluster rural communities, and out on the range. The plan as it stands now does, I think, as much as possible.

Mr. **Yates**. Is there a plan?

Mr. **McAlister**. I think there is.

Ms. **Massetto**. No. There is a conceptual determination by the Commission, but we do not have homesites. We do not have the kind of range management we are going to have. BIA has suggested a range management which would have intensified grazing in several areas, but that has not even been presented to the relocatees, and they are going to have to agree on the kind of range management they have, because it is going to be a condition of their permit.

That will probably take a year to determine.

Mr. YATES. What is the procedure for obtaining relocatee approval? Do you call them in individually or do you call them in in conjunction with Mr. Zah?

RELOCATEE APPROVAL

Ms. MASSETTO. Individual approval on what?

Mr. YATES. On where they are to be relocated.

Mr. ATKINSON. It is done on their request. The law doesn't allow us to tell a relocatee where they will relocate. The law specifically specifies that relocatees will select their site.

Mr. YATES. But then you offer a relocatee an opportunity to go to a certain place, do you not? Is that done in conjunction with Mr. Zah and the so-called ruling authorities of the Navajo Nation, or is it done on a one-to-one basis between the Commission and the relocatee?

Mr. ATKINSON. It is done both ways. Probably not done with Chairman Zah, because of his own burden of duties, but it is done with the chapter president and council delegates.

Mr. YATES. I see. So there is some tribal authority that reviews this as well as the relocatee.

Mr. ATKINSON. Yes, sir. We do have a plan. Let me just emphasize that. We do have a plan.

Ms. MASSETTO. Where is it?

Mr. ATKINSON. It is going to expand further and go on, but right now, it is still in the final draft.

Mr. YATES. Do you have a plan or an idea?

Mr. ATKINSON. No, we have got a plan. Is that right?

Mr. MCALISTER. Yes, sir. Of course, a plan is a developing instrument, Mr. Chairman. I believe Ms. Massetto's, concern was that we never stop getting input until a process is over.

Ms. MASSETTO. Are you talking about this preliminary range management plan? Is that what you are talking about?

Mr. MCALISTER. No.

Ms. MASSETTO. What document is it? I just want to see the plan.

Mr. YATES. Do you have a copy to show Ms. Massetto?

Mr. MCALISTER. At this point in time, Mr. Chairman, we don't have a document. What we have is the first major process including the new lands, which, let's be very frank, are very new as far as just having acquired them and bringing them into the planning process.

Mr. YATES. So you don't have a plan.

CONGRESSIONAL REPORT

Mr. MCALISTER. February 15 is when you have asked for a Congressional report. That will be the first major explanation of all of the parties. We have just now begun to get BIA and IHS involved. We are putting together a charting process to be sure these people are informed and feedback on their time frames.

It is not simply a matter of reaching out and grabbing a plan.

Mr. YATES. Okay. Then, on February 15, you will announce, I assume the committee will receive, a plan that has the approval of Mr. Swimmer, BIA, as well as the Commission. Is that correct?

Mr. McAlister. I would hope so, but our instruction in the legislation says, it is to include the views of the Secretary on housing—the provision of housing and roads.

Mr. Craft. Review and comment by the Secretary.

Mr. McAlister. It doesn't specify approval or comment, views on two specific things by the Secretary.

Ms. Massetto. Mr. Chairman, you made a comment that you wanted a person identified to a site.

Mr. Yates. Yes.

Ms. Massetto. That language is used in the report, and that is part of the requirement of the February 15 report. Do you want a person attached to a site in that report?

Mr. Yates. You can't do that, can you? You don't have the time to do it, do you?

Ms. Massetto. All right.

Mr. Yates. Do you?

Ms. Massetto. No.

Mr. Yates. You can't do that. So what you are saying—well, what do we expect? You are going to give us some kind of document on February 15, which you will call a plan, and that will be sent to the Secretary for his comments.

Will you also send a copy of that to the committee?

Mr. McAlister. We are instructed to send it to the committee.

Mr. Yates. You will send a copy of that to the committee, and the committee will see it and that will tell us how you intend to proceed, right?

Mr. McAlister. Yes, sir.

Ms. Massetto. Will Mr. Zah be included, and the relocatees, in that?

Mr. Yates. I don't know. Will somebody answer Ms. Massetto's question?

Mr. Atkinson. Have we worked with the relocatees on this? They are knowledgeable in the plan or not?

Mr. McAlister. The report of February 15?

Mr. Atkinson. Yes, sir.

Mr. McAlister. No, sir. All of the input that has been reflected on all the documents you have, and many you don't have we have been trying to discuss here today have gone into that.

Now, we received word less than a month ago that Congress wanted us to submit this report, and it was to tell you what our plans were for the new lands, services we would provide on the new lands, services we would not provide, and what the alternatives were.

It did not ask for a completed, comprehensive plan for completing relocation.

Ms. Massetto. The 1974 Act did.

Mr. Yates. The 1974 Act did, and suppose the committee were to ask you now when you can give us the comprehensive plan?

RANGE MANAGEMENT PLANS

Mr. McAlister. The most critical time frame at this point in time is we have an agreement with the BIA—and this might address two separate things that have come up here in the last 10

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minutes—to complete a range management study on each one of the ranches to be acquired.

They have included Wallace and Spurlock Ranch.

Mr. **YATES**. Who is to do this?

Mr. **MCALISTER**. The BIA office in Flagstaff. Until those range management plans are completed which identify the clusters, we don't know the exact number of permits that will be available, and therefore cannot make a positive assessment of how many people will receive permits, ergo how many people will move with them in the clusters, et cetera.

It is a changing process, Mr. Chairman.

Mr. **YATES**. Okay. BIA will be through with its portion of your preliminary planning by the end of March. After that, you are in a position to give us a comprehensive plan?

Mr. **MCALISTER**. As each one of those plans come on board or are completed to work with tentative siting, we then have to involve the Indian Health Service to see if they agree with the sites, to see if we can bring water.

For instance, in group settings which we would like to do, the IHS has proposed they would like to have a community system even to these clusters, but once the tentative siting has come from CH2M Hill as a result of what IHS does on each one of the clusters, BIA has to review it.

Mr. **YATES**. Is this a description of what various agencies have to do as a part of your plan?

Mr. **MCALISTER**. Yes, it is.

Mr. **YATES**. Your plan that you will make available on February 15?

Mr. **MCALISTER**. Yes. We also have a draft memorandum of understanding we have been working with IHS and BIA to try to delineate who has what responsibility.

COMMISSION/BIA MEMORANDUM

Mr. **SWIMMER**. Mr. Chairman, I am not in a position to tell the chair how to proceed, or the commission. As I said, I set out some steps that presuppose that the planning has to start with the people. We are doing evaluation.

Mr. **YATES**. That isn't the plan they are following.

Mr. **SWIMMER**. They have some plans that follow generally some of the things that their engineer has done, which are yet to have the input of the people. They very well might be prepared on the 15th of February to tell us how we are going to interact. I don't have a memorandum of agreement or understanding yet with the commission. I gave one this morning to their attorney and suggested a proposed format, but it seems to me that we are trying to complicate it. Basically, we do have to contact all of those people who are eligible, certified, relocatees, and find out where they are. We don't know that yet. Nobody can tell us.

Mr. **YATES**. Do you know where they are at, Mr. Watkins?

Mr. **WATKINS**. We don't know where they are.

Mr. **SWIMMER**. Nobody knows that answer.

Ms. **MASSETTO**. Do you mean physically?

Mr. **Swimmer**. Physically where they are located. We have got to start with that. Then we find out which ones are potential relocatees for more urban type or subdivision setting, what kind of job opportunities they might be in need of, what kind of training they would need. We identify which ones are potential grazing families, which ones of those grazing families might want extended families living close to them, and in that case how far away from the job market where the extended family might drive, that would have something to do with where we locate the grazing permittees.

After those issues have been fleshed out, we have an idea of what kind of people we are talking about here, 1500. Then we start developing our site plans, whether we are going to have a subdivision, whether we are going to have grazing, whether we are going to have to go into Winslow or locate other opportunities. At that point the NHC comes in and does the engineering, the surveying, locates the rights-of-way, we dedicate them, we set up the house plan, and start building houses. It is conceivable that if we are following a track on this, it could actually happen with some construction beginning in the next six months, as we identify people, and start developing where we can.

Now, we can't do the subdivision in that period of time, but I am talking about people who might be interested in grazing permits, and when we talked at the commission last week, we developed a priority for the new land, which would be those people who are physically residents on the HPL now, and have grazing permits. They would be given the first right of refusal for a new land grazing permit.

Second would be their immediate families, people that would choose to live nearby, want to support the family structure and live there. The grazing permit then, the second criteria, would be those 1250 or so people that had a permit to graze as of 1980, I believe it was. At that point, the new land will have been used up and we will have located potentially from two hundred to twenty-five hundred people there, which we don't know yet. Then we also have to be working the other side of this thing, to find where we are going to locate the people that are scattered because that is a very serious problem in my mind, and I don't think we can just deal with 208 heads of household. I think we have to deal with 1500 heads of household.

Mr. **Yates**. What can the commission give us by next week, then, Mr. Swimmer?

Mr. **Swimmer**. I don't know.

Mr. **Yates**. If they follow your proposal, they can give us nothing; is that right?

Mr. **Swimmer**. They can't give us a plan in my mind that I would be satisfied with as far as locating potential housing to be developed, because we have to do the work with the individual Navajo families to find out what plan we are going to put together.

Mr. **Yates**. You have submitted a memorandum of agreement to them, in which you lay out the proposed schedule and plan for attacking the problem?

Mr. **Swimmer**. I laid out a proposal on how we might work together on this.

Mr. **Yates**. Does that follow what you have just told us?

Mr. Swimmer. Yes.

Mr. Yates. I think probably that is the kind of thing you had better tell us on the 15th, because I don't think the other thing you are going to send to us would serve the purpose. It seems to me that you have got the first tangible approach, and that is getting the consent of the people who are the subjects here, and it doesn't make sense to me, as it didn't before, to just lay out a system and then tell the people this is what we have, and you take your choice now. That doesn't make sense to me.

At any rate suppose you work out your memorandum of understanding, and you let me know what success you have with that, Mr. Swimmer and Mr. Commissioner, and I hope you come to some memorandum of agreement that will provide for taking care of people as people rather than as nonentities in this whole scheme of things. Mr. Swimmer.

COMMISSION VS. BIA RESPONSIBILITY

Mr. Swimmer. If I might make a statement, because you asked the question earlier this morning, and I didn't give you a direct answer, and I hadn't heard some of the testimony that came out. I feel somewhat constrained, the fact that I have received part of the money to do the end product, the housing, and that the commission is involved in doing everything up until that point, and I am also concerned about our relationship and how it might develop with the commission or might not develop with the commission.

In 1980 there was apparently an overt move to move the bureau away from the commission as far as we could go, which I am sure was fine with my predecessor and as far as I am concerned is fine with me. My concern is that I think—and I don't question the wisdom of Congress in doing this, but I think that one or the other should have the burden of finishing this, because I kind of look down the road, and am afraid that I am going to wind up with a burden——

Mr. Yates. I think you are, too.

Mr. Swimmer [continuing]. With some people, years from now, and I am not convinced that it should be one or the other place. I think if the commission is going to develop a comprehensive plan for the ground use, development and all that, that they certainly should go ahead with the housing. If we are supposed to be trying to locate housing and put people in it—and I am going to address it from that angle—then I have got to have the role of the other, and I would ask the Congress to consider that concern of mine, and either take the money and put it back with the commission or——

Mr. Yates. I can see what is happening now. You have your ideas as to how the plan should proceed. The commission staff apparently has another idea what we are supposed to do.

Mr. McAlister. If I might comment, Mr. Chairman. Bearing in mind in the last three years we had the press of a deadline that has not gone away.

Mr. Yates. How does that bear on what Mr. Swimmer has said?

Mr. McAlister. I am saying that what Mr. Swimmer has said that we are going to approach it from a one-on-one basis will take more time. There is nothing wrong with that plan, but we had certain pressures.

Mr. **Yates**. But don't you agree you have to do it one-on-one, or don't you think the relocatees have any voice in this?

Mr. **Atkinson**. From the point of the families.

Mr. **Swimmer**. It has been eight or nine years on some of these families.

Mr. **Yates**. As Ms. Massetto has pointed out, it has been eight or nine years that they have been waiting for a place to live. I think we had better wait until we get the plan on the 15th, hear what you have to say, and then we will decide from then on where we are going with this. I think the hearing has been helpful in defining certain paths that should be taken. I don't know whether you are going to have enough money to carry out your charge, in view of Gramm-Rudman, and in view of deferrals and rescissions.

Apparently the administration doesn't believe that the Interior bill, to which the President set his signature, is the controlling instrument, because we are getting these deferrals and these rescissions. I dread thinking of trying to accommodate the Indian Health Service with the cut that the administration proposes. I think it is an inordinate and unfortunate cut, and how that bears upon your situation it seems to me to be a very complicating factor.

I think that we have to adjourn the meeting at this time until we get your reports, and see where we are going after that. The next time we meet I suspect that we will be going into more budget problems.

I think everybody has had his say today. If there is anything else you want to tell me later off the record or in private, I will be very glad to hear it. In the meantime, we stand adjourned subject to the call of the chair.

WEDNESDAY, APRIL 23, 1986.

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

WITNESSES

RALPH A. WATKINS, JR., CHAIRMAN
SANDRA MASSETTO, COMMISSIONER
HAWLEY ATKINSON, VICE CHAIRMAN
CHRISTOPHER J. BAVASI, EXECUTIVE DIRECTOR
MICHAEL J. McALISTER, DIRECTOR, MANAGEMENT
PAUL M. TESSLER, DIRECTOR, OPERATIONS
ROSS O. SWIMMER, ASSISTANT SECRETARY—INDIAN AFFAIRS, BUREAU OF INDIAN AFFAIRS
FRED CRAFT, COUNSEL
ERIC EBERHARD, DIRECTOR, NAVAJO NATION WASHINGTON OFFICE
MR. DENETSOSIE, DEPUTY ATTORNEY GENERAL, NAVAJO NATION
ROGER J. BOYD, EXECUTIVE ADMINISTRATOR, GOVERNMENT RELATIONS, NAVAJO NATION

Mr. YATES. Mr. Reporter, show the hearing as coming to order. This is the hearing on the budget for fiscal year 1987 for the Navajo-Hopi Indian Relocation Commission. Appearing in support of that budget is the Chairman of the Commission, Mr. Ralph Watkins. He is accompanied by Ms. Sandra Massetto, who is a Commissioner, and by Mr. Hawley Atkinson, who is the Vice Chairman of the Commission. They are the three Commissioners.

And then, in turn, they are accompanied by Mr. Christopher Bavasi, the Executive Director; Mr. Mike McAlister, the Director of Management; and Mr. Paul Tessler, the Director of Operations.

Mr. Watkins has a statement that may go into the record at this time.

[The statement of Ralph A. Watkins, Jr. follows:]

UNITED STATES GOVERNMENT
NAVAJO & HOPI INDIAN RELOCATION COMMISSION
P. O. BOX KK • FLAGSTAFF, ARIZONA 86002

STATEMENT OF RALPH A. WATKINS, JR.
CHAIRMAN, NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

Before the House

COMMITTEE ON APPROPRIATIONS, SUBCOMMITTEE ON THE DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES. IN SUPPORT OF APPROPRIATIONS FOR THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION FOR FISCAL YEAR 1987.

April 23, 1986

MR. CHAIRMAN:

My fellow Commissioners and I, as well as our staff members, appreciate the opportunity to appear here today. As you are aware there have been a great many major activities affecting the Relocation Commission since we last appeared before you. I would like to take this opportunity to discuss some of the occurrences during the past year, as well as the Commission's policy on pending activities.

We are pleased to be able to report to the Committee that the five ranches selected by the Navajo Tribe in June of 1983 have all been acquired through the strenuous efforts of the Bureau of Land Management. This means that, to date, approximately 215,000 acres have been made available for Navajo families awaiting relocation. Pursuant to the authority of P.L. 96-305 the Navajo Tribe also identified two additional ranches, presently owned by them in fee, to be taken into trust for relocation purposes. To date these ranches have not been made available although the Commission has received assurances from Chairman Zah that the land will be turned over as soon as a resolution to do so is introduced and passed in the Tribal Council. When this is accomplished there will be approximately 365,000 acres of new land available which will provide an opportunity for some of the more traditional families to graze and to move with their extended family groups.

During the last six months, the Relocation Commission has been working with the Bureau of Indian Affairs and the Tribe to determine the number of families remaining on the HPL who are subject to relocation. The Bureau of Indian Affairs reports 233 Navajo families are currently residing on the Hopi Partitioned Lands. The Navajo Tribe's most current estimate is that there are 905 adult Navajos who are currently residing on these lands. The Commission currently estimates approximately 300 Navajo heads of household still residing on the Hopi Partitioned Lands. The numbers are different because each agency and the Tribe have a different set of parameters for determining inclusion on the list. The Commission is continuing to work with the Bureau of Indian Affairs and the Navajo Tribe to establish an acceptable reporting format which will clarify the categories in which all of these individuals fall.

During the last year the Commission also completed what we felt was sufficiently comprehensive planning, and transitioned to site specific engineering. The Commission had reached the point of nearing completion of its full operational plan for utilization of the New Lands in December of 1985. With the passage of P.L. 99-190, and in accordance with its provisions, the Commission prepared a comprehensive Report to Congress which summarized its plans for completion of the relocation project. That report was submitted to Congress on February 15, as prescribed by law.

Also, as a result of P.L. 99-190 the Assistant Secretary of Indian Affairs has become very much involved in the relocation process. In a spirit of full cooperation the Commission has entered into a Memorandum of Understanding with the Assistant Secretary to provide for additional survey work regarding the desires of relocatees in relationship to residence patterns on the New Lands. The details of this survey project are contained in a reprogramming request which has been approved by OMB and forwarded to the Committee. At this point in time it appears that the survey will begin in late July and take approximately 120 days to complete. The current MOU with the Bureau of Indian Affairs extends to the provisions of this survey only. The Commission is currently in the process of revising its plan to insure that we are in a position to carry out our mandated responsibilities for relocation following the receipt of results of this survey.

I would like to address one other issue that seems to have been a matter of concern and some possible misunderstanding. This is the matter of the Commission's historical requests for sufficient resources to complete the relocation program within the originally envisioned timeframe. As you know, the Navajo and Hopi Indian Relocation Commission is an arm of the Administration. As such, our request for authority and funding must be balanced with the Administration's priorities across the full spectrum of federal programs. We are, therefore, properly constrained by regulation from coming forward with authority and funding level proposals which are not in accord with the Administration's overall priorities. Therefore, broadened authority requests and enhanced funding levels not in accord with the Administration's priorities are properly not made a part of the official record. I feel I must point out, however, that the Commission has made the Committees aware, in every legitimate forum over the last several years, of our estimate of the resources necessary to complete the relocation program. In May of 1984, at the request of the Senate Appropriations Committee, the Commission submitted a comprehensive report detailing what it considered to be the resources necessary to complete relocation. One year ago, the Commission forwarded to the Committees a report detailing a land development fund and specified the resources required to address development on four of the ranches that we anticipated would be acquired during Fiscal Year 1986. In the Report to Congress, required by P.L. 99-190, the Commission has again detailed its plan for completion of relocation and included therein appendices which reflect our estimate of the resources required to complete this program.

There are many factors, which are in the process of resolution at this point in time, that bear on Commission plans for future relocation activity. I believe that the relationship between the Bureau of Indian Affairs and the Relocation Commission is becoming clearer, as a result of meetings between all of the principal participants, and that within the near future there will be agreement among all parties as to how we should proceed.

The Memorandum of Understanding with the Bureau of Indian Affairs calls for the completion of the survey which has been discussed above. In accordance with the provisions of P.L. 96-305 which states in part, "...control over and responsibility for completing relocation shall remain in the Commission", the Commission will be preparing a revised estimate of staff resources required during Fiscal Year 1987 to carry out approximately 500 relocations. Given the Commission's level of authority for housing funds, and the amount of money which we believe will remain to be expended by the Bureau of Indian Affairs, there will be sufficient funds for approximately that number of relocations during Fiscal Year 1987. The question of legislation currently pending which would alter, in major ways, the relocation effort, presents some problems. The ability of either the Bureau of Indian Affairs or the Commission to accurately gather information and solicit involvement of HPL residents is impaired by the possibility of a major change to the law. This is, however, not the first time that the Commission has worked under these kinds of constraints, and we believe we will be able to move forward with the survey and accomplishment of the initiation of relocation to the New Lands in spite of the indecision in the minds of many of the relocatees based on this pending legislation.

Mr. Chairman, that concludes my formal statement to the Committees. The Commissioners will be pleased to respond to any questions which you may have at this time.

Mr. **Yates**. Mr. Watkins, with your statement in the record, tell us what progress you have been making in trying to carry out the congressional direction to achieve relocation.

Mr. **Watkins**. Good morning, Mr. Chairman.

What areas would you like me to proceed in? Do you want the good things?

Mr. **Yates**. I think you should tell the good things, because some have related to me some of the not-so-good things they felt you have done. Apart from that, if you have good things, I suggest you get them into the record quickly.

JULY DEADLINE

One thing that is of concern to the committee is the July 6 deadline. Yesterday, we asked Mr. Swimmer about this. We had heard some talk about the possibility of violence there, as some people want the deadline observed and the land turned over immediately to the Hopis, and others say there is no place for the Navajo to be moved who are on the Hopi Partitioned Land, and we have to do everything we can to avoid violence.

Now, Mr. Swimmer testified yesterday that the Bureau of Indian Affairs has its policemen out there. I think that Hazel testified she had talked to the FBI, too, in connection with this. Did she not say something about that?

Mr. **Swimmer**. Yes, she did.

Mr. **Yates**. Do you want to repeat it for this record, Mr. Swimmer?

Mr. **Swimmer**. We have made provisions within our law enforcement program, and we do not contract our law enforcement on the Hopi Reservation, so they are all under our control, and we make provision not only to alert those people who are working as Hopi law enforcement through the Bureau of Indian Affairs, but any other law enforcement people in our system that, as needed, they would be available to handle events that might come up on the HPL. So I think, without getting——

Mr. **Yates**. The HPL being——

Mr. **Swimmer**. The Hopi Partitioned Land.

Without getting into a lot of detail, hoping not to set the stage for some other event, I think we are prepared, and we will do our best, to provide peace out there with the police officers that we have and others that are on call. I believe she mentioned the number of 25 people were available.

Mr. **Watkins**. A brief synopsis for the group back here is that the Relocation Commission is a home building unit, and those responsibilities for the lands out there are not ours. The Commission is going to withdraw any and all of our employees in that area, we have no anticipation of any violence at this particular time, Mr. Chairman.

INDIVIDUALS MOVED AND AWAITING RELOCATION

Mr. **Yates**. That is fine.

Well, there are two groups I think we ought to talk about. One group is the 1,200—how many people are there?

Mr. **Watkins**. Twelve-hundred, yes, sir.

Mr. **Yates** [continuing]. Twelve-hundred Navajo families who voluntarily agreed to move from land assigned to the Hopi and departed from their homes and who are now living in a circumstance that I will describe as very bad circumstance for the most part. They don't have homes of the kind that were originally ordered by Congress: safe, sanitary, and comfortable. Those people are waiting for the Commission to make homes available to them.

On some occasions, the Commission has made some homes available to them. They have sold those homes. It should be pointed out that the Navajo, for the most part, live in very rural areas. They live in what are called hogans, which is the name for their particular form of house. And this is in the middle of a desert area where they raise their sheep. The effect of the relocation has been to transfer them from that kind of surrounding to a more urban or city surrounding. They aren't use to that kind of living, and some of them find themselves in very strained circumstances, very unhappy. They are off the reservation, away from their people. That is one of the considerations that we are interested in as a committee, to make sure that the Navajo are properly taken care of as they move out of their original sites.

That is a group of 1,200. How many do we have on the HPL? We know the numbers vary.

Mr. **Watkins**. Yes, sir.

HPL RESIDENTS

Mr. **Yates**. What numbers do we have for those families who still have to be transferred?

Mr. **Watkins**. We have got a number of 300 or 350, but there are divergent opinions, sir, and we are about to accomplish the goal next week. I think we have a meeting on the 28th with all the principals involved to try to come up with a single figure or single agreement on how to figure the heads of household.

Mr. **Yates**. Mr. Swimmer, have you checked the numbers?

Mr. **Swimmer**. The best number we can come up with, physically resident households on the HPL, would be 248, and I had given the number 238, but we have identified ten other families, and those are people that are heads of household occupying a dwelling on the Hopi Partitioned Land. That does not include such things as maybe a child who has just turned 18 this year, and even though living in that household under some certification, could become a head of household and add another number to that.

But the dwellings that we count, people that occupy that dwelling, we come up with 248, to our best knowledge. That is on-site review of hogan to hogan.

Mr. **Yates**. The last time we met the Commission at a hearing earlier this year, we talked about the problems of relocating people, the social problems of relocating people, and you said at that time, Mr. Swimmer, that you proposed to look into the matter and check the Navajos and talk to the people and try to lay the foundation for this movement.

Now, what has happened since then?

BIA PLANNING

Mr. **Swimmer**. From the brief meeting I had with the Commission before the testimony of approximately eight weeks ago, I think that was February, I then made a trip to the Hopi Partitioned Land and spent three days visiting Navajo families on the partitioned land and chose three specific areas. I visited approximately 20 heads of household families and had a few other family groups come in at those meetings. They were basically unannounced meetings, but just to visit and get an impression, not promoting relocation, but to get an impression of what was going on, and I had taken with me at that time a proposed memorandum of understanding that the Bureau had developed and our field people primarily had developed to deal with what we perceived at least to be some counseling problems or confusion problems.

And in my discussions with the heads of those families there and family members, it was obvious to me that there was a tremendous amount of confusion. Some people had signed up for relocation years ago. Many were simply adamant, especially a few of the elderly, that they simply couldn't move, they had no place to go, they didn't believe they had any place to go, they didn't have family with them, they were distressed over the fact they had to give up grazing and they really didn't know what relocation was. They were confused about it and didn't know if they were supposed to move, not supposed to move, and a few of them we talked to did appear a little more knowledgeable and were somewhat ready to move.

I guess a couple families we talked to were anxious to move because they had heard about the new land and had taken a bus trip to the new land and indicated a desire to move so they could improve and increase their pasturing of sheep and cattle and get a better house.

NHIRC/BIA MOV

We did succeed in signing a memorandum of understanding. I presented a memorandum of understanding to the Commission, which I believe the committee has a copy.

Mr. **Yates**. We put it into the record of the BIA hearing yesterday and we will put it into this record as well, Mr. Reporter.

[The Memorandum of Understanding follows:]

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
AND
THE SECRETARY OF THE INTERIOR

PURPOSE

In order to clarify the Commission's and the Secretary of the Interior's duties and responsibilities under the Act of December 7, 1974, as amended, 25 U.S.C. 640d *et seq*. and the Act of December 19, 1985, the parties agree that between themselves their respective responsibilities are as set forth herein.

DEFINITIONS

1. "Commission" means the Navajo and Hopi Indian Relocation Commission.

2. "Secretary" means the Assistant Secretary, Indian Affairs.

3. "Planner" means the Commission's present contract planner, CH2M Hill, or its successor.

4. "Plan" means a written report by the Planner performed pursuant to a Task Order to the Planner's Master Contract with the Commission. A Plan is a written feasibility study. The Plan must be in greater detail and more definitive than "appraisal level", but does not have to meet the standard of a "detailed plan". A plan requiring locations is adequate if the points located are within 1/4 of a mile of the actual on the ground location. As an example of the detail required, a photograph type depiction of the exterior of a dwelling from 50 yards would meet a requirement of the location and description of a dwelling. Monthly interim written reports with associated maps and supplemental data are required to be submitted to the Commission and the Secretary.

5. "Master Contract" means the Planner's existing contract with the Commission to perform studies and plans to facilitate the relocation of Navajo individuals from the Hopi Partitioned Lands.

6. "Task Order" means a requirement under the Master Contract for the Planner to perform work and produce a written report.

7. "Scope of Work" means the description of the work to be performed by the Planner pursuant to a Task Order.

8. "Survey" means a written report documenting and analyzing the results (and grouping the Relocatees that desire to live as neighbors) resulting from the Planner's personal interviews, utilizing the required questionnaire attached to and incorporated by reference into the Task Order, of each of the Navajo heads of households presently residing on the Hopi Partitioned Lands who are entitled to be relocated to the New Lands recently added to the Navajo Reservation. The survey will collect the relocatees' views on all significant issues related to relocation including the relocatees' views on where houses should be built, what types of houses are desirable, views on grouping and the size of the groups of houses, identification of preferred neighbors to be included in housing groups, identification of preferred neighbors who now live on the Hopi Partitioned Lands and those who do not presently live on the Hopi Partitioned Lands but who are entitled to a replacement home under the Relocation Act, the preferred infrastructure such as the types and location of water facilities, preferred grazing methods, identification of areas on the New Lands where the Relocatees desire to live, and related issues. The survey will also include a presentation of the options available. The Survey will further set forth the advantages and disadvantages, including short and long term financial costs to the individual Relocatee associated with the options.

9. "Notice to Proceed" means a written order by the Contracting Officer to the Planner to implement a Task Order.

10. "Contracting Officer" means the individual possessing a contract warrant and is authorized to execute modifications to the Master Contract and to expend Government funds for that modification.

11. "Deliver to the Secretary" means to transmit by the fastest means practical under the circumstances. Brief items will be transmitted by telefax or similar means. Lengthy items will be transmitted so as to be received by the Secretary on the next business day by next day mail.

12. "Key Personnel" means employees of the Planner that are professionally qualified in the field for the work required by a Task Order and who are to personally supervise or perform the required work.

13. "Relocatees" means the Navajo individuals presently residing on the Hopi Partitioned Lands for which the Secretary is required to construct replacement dwellings under the Relocation Act.

14. "New Lands" means the 250,000 acres of private lands recently acquired by the Commission and added to the Navajo Reservation and the 150,000 acres of the Navajo Tribe's fee lands to be taken in trust by the United States for the relocation of the relocatees.

15. "Contract Action" means the process of acquiring a Plan. A Contract Action will include the following steps: the Contracting Officer and the Planner will meet within 5 calendar days of the Contracting Officer's request for a meeting. The Contract Officer will inform the Planner of the Plan desired. Within 7 calendar days of the initial meeting, the Planner and the Contractor will develop a draft Scope of Work, including the time within which the Plan must be completed after issuance of the Notice to Proceed, and deliver the Draft Scope of Work to the Secretary. Within 5 calendar days following receipt of the Secretary's revisions to the Draft and the proposed delivery date of the Plan, the Contracting Officer will deliver to the Planner the Scope of Work. Within 5 calendar days thereafter the Planner will deliver to the Contracting Officer and to the Secretary a proposal to perform the Scope of Work and a list of the Key Personnel. Within 5 calendar days of receipt of the Secretary's revisions to the Scope of Work and his views on the Key Personnel, the Contracting Officer and the Planner will negotiate a price for the work. Immediately following the negotiation, the Contracting Officer will deliver to the Planner the Task Order and, after telephonic consultation with the Secretary, issue the Notice to Proceed.

UNDERSTANDING

A. SURVEY

The goal is to achieve the voluntary relocation of the Relocatees to the New Lands in accordance with the applicable law in a manner that, consistent with their existing or desired life styles, the Relocatees can be economically self-sufficient to the maximum extent feasible given the limitations of the available resources. Additional consultation with the Relocatees will facilitate the accomplishment of the goal. Accordingly, the Commission and the Assistant Secretary will jointly develop a survey instrument that will include an options document and a questionnaire. The survey instrument will be used to solicit from the relocatees information that the Secretary and the Commission will use in developing and implementing further planning and the relocation. The Task Order for the Survey will require that each Relocatee head of household be interviewed if possible, specify the method for conducting the interview, and provide the conditions under which follow up interviews will be required. The Commission will initiate a Contract Action to acquire a Survey Plan from the Planner within __ days of the execution of this Agreement.

B. POST-SURVEY

Following receipt of the Survey Plan, the Commission will visit tne Secretary and together they will develop the requirements for the next Plan to be furnished by the Planner.

C. RANGE MANAGEMENT PLAN

This successful relocation of the Relocatees requires the identification of the specific sites for the location of the Relocatees' homes. The identification of the sites for these homes requires matching the housing site to the grazing area to be used by the Relocatee who will have grazing rights on the New Lands. The Navajo Partitioned Lands Office, Navajo Area Office, Bureau of Indian Affairs, on behalf of the Commission, has made a preliminary identification of grazing areas and relocatee home sites on the former Wallace Ranch portion of the New Lands. The Bureau of Indian Affairs preliminary plan is based on a management plan that is significantly different from the grazing methods the Relocatees presently use. Whether the preliminary range management plan, and hence the home site locations, can be implemented is dependent of the results of the Survey Plan. While awaiting the results of the Survey Plan, the Commission within __ days of the execution of this Agreement will initiate a Contract Action with the Planner for a Range Management Plan for the remaining portions of the New Lands. The Scope of Work for the Range Management Plan will include a requirement for the following alternatives: (a) separate pastures, both fenced and unfenced, for each Relocatee who will have grazing rights on the New Lands and desires to graze his animals as he now does; (b) separate pastures within a range unit where several Relocatees will graze their animals in common and rotate their use among the pastures permitted; (c) other techniques that are proposed as alternatives in the Survey Plan documents. The Range Management Plan will be supplemented as a result of the determinations following the receipt of the Survey Plan.

D. ROADS

The location of roads traversing the New Lands to connect the Relocatees with access to stores, medical facilities, etc., must precede relocation of the Relocatees. The Commission will initiate a Contract Action with the Planner within __ days of the execution of this Agreement to locate roads on the New Lands. The Task Order for the Road Plan will require that it be developed simultaneously and in conjunction with the Survey Plan and the Range Management Plan and display alternatives that mesh with the alternatives and options displayed in those other Plans. The Task Order will require that the Road Plan identify which alternative roads can be quickly made available by grading and drainage, and still provide access except for limited intermittent closure due to brief periods of inclement weather.

Additionally, the Road Plan Task Order will identify the other alternative road alignments that cannot be quickly opened and those which require relatively expensive efforts and longer construction time. Further, the Road Plan must provide appraisal level estimates of construction costs for the individual roads and the entire road system. The Task Order for the Roads will identify prospective local sources of materials that can be used to construct the roads, the type of road that these materials can support, and local or nearby sources of aggregate and other necessary construction materials and the potential locations for crushers to produce materials to construct the roads where such materials would be required.

E. WATER

The identification of sources of domestic water must be identified in conjunction with the Survey and Range Management Plans so that the Relocatees will not be required to haul water. The identification of these sources is a prerequisite to the identification of the Relocatees' replacement homes. Within __ days of the execution of this Agreement, the Commission will initiate a Contract Action with the Planner to acquire a Water Plan. The Water Plan must include alternatives that meet the alternatives and options contained in the Survey Task Order. The Water Plan Task Order must include as an alternative the provision of domestic water through use of wells driven by windmills and cisterns to provide water when the windmills are not active. The windmill alternative in the Water Plan Task Order must provide that each well will be used by less than 25 persons per well. The Water Plan will not require the construction of test wells or production wells unless ordered by a modification to the Task Order. However, the Task Order will require the Planner to notify the Contracting Officer when the Planner perceives a need for such test or production wells.

F. HOUSING CONSTRUCTION

The Secretary will construct the housing for the Relocatees and construct the roads required, up to the limit of funds appropriated and available, when the Plans described herein are completed, the requisite decisions are made following the analysis of the Plans, and the requisite infrastructure is near completion in order that the houses will be available at the time that the necessary infrastructure is available.

G. AMENDMENTS

This Agreement will be amended from time to time as conditions warrant.

H. SECRETARIAL REQUESTS FOR PLANS

The Commission will initiate a Contract Action within __ days of receipt of a request from the Secretary for a Plan not covered by this Agreement.

I. MASTER CONTRACT RENEGOTIATION

Within __ days of the execution of this Agreement, the Contracting Officer will meet with the Planner and renegotiate the Master Contract, if necessary, to determine whether the Planner will perform the Task Orders contemplated by this Agreement.

J. CONSISTENCY WITH APPLICABLE LAWS

The provisions of this agreement are premised on the understanding that existing law is a material provision of it. In the event that a portion of this Agreement is inconsistent with applicable law, then that inconsistent provision of this Agreement is a nullity. In that event, the Commission and the Secretary will implement the provisions of this Agreement to accomplish its intent and spirit and incorporate into the agreement the applicable law.

K. LIMITATION TO AVAILABLE FUNDING

The responsibilities detailed in this Agreement are subject to available funding. The Commission will give priority in the use of its funding first to providing housing benefits and second to implementing this Agreement.

FEBRUARY 25, 1986
Dated

Ralph A. Watkins Jr
CHAIRMAN
NAVAJO AND HOPI INDIAN
RELOCATION COMMISSION

February 25, 1986
Dated

~~February~~ Hawley A
VICE CHAIRMAN
NAVAJO AND HOPI INDIAN
RELOCATION COMMISSION

February 25, 1986
Dated

Sandra L. Massetto
COMMISSIONER
NAVAJO AND HOPI INDIAN
RELOCATION COMMISSION

2/25/86
Dated

Ross O Swimmer
ASSISTANT SECRETARY
INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR

Mr. **Swimmer**. Essentially what we proposed in this memorandum of understanding was a method by which the Bureau of Indian Affairs, under my direction, would take responsibility for working with those 200, at that time 238 families, and what now appears to be 248 families, that were physically resident on the Hopi Partitioned Land, and work with them in a way that would inform them of what this whole thing was about, attempt to explain, as best we can in the Navajo language, what the relocation act did, what the court decisions did, and discuss the options that were available, options being where they could relocate, possibly on Big Navajo, possibly on the new lands, and what have you.

So the memorandum also provided that we would take an active part in the development of the new lands, establish grazing units, working on the road situations, working on the water, provide water and electricity in a manner that was—in the best way possible to replicate the lifestyle the Navajo have now, so when they moved, they would not be thrust into a different style of living to any great extent.

And to do that, we have to find a lot of very detailed information out about the people, have someone who can interpret that information in the way that is culturally sensitive, and then apply that information to the places where the people are going to go and the communities which are going to develop.

That was the intent of our MOU at the Commission. They signed it, we have agreed to do it, and since that time, I established an internal task force that is——

Mr. **Yates**. Let me interrupt. I have to go vote.

[Recess.]

Mr. **Yates**. The hearing will come to order.

BIA PROGRESS

Mr. Swimmer, you were talking about what you had done. You had almost completed your statement, if you hadn't. Is there anything else you wanted to add to what you were saying?

Mr. **Swimmer**. I think it was virtually complete. We did sign the MOU, the Commission and I had met about it, and I think we can work together on it. I set up a task force, and I brought some people into the task force that I thought were—I think you referred to Ms. Helmer the other day—but that have the background in this kind of work and ask that those people on the task force report to me and that I keep in touch with what is going on.

We have been at the point now where we are trying to determine how we can get the funds to pay for that portion of the work, the counseling and all that is supposed to be done, and we have submitted—I think the Commission can testify to this—but they have submitted a reprogramming request for some money to do this. That is what we are waiting for now.

REPROGRAMMING REQUEST

Mr. **Yates**. That is the request that was submitted this morning?

Mr. **Swimmer**. I believe they submitted it last week.

Mr. McAlister. We submitted that last week. We have now received the approval of OMB to submitt the request to the committees.

Mr. Yates. What is the status of the relocation effort, Mr. Watkins?

COMMISSION PROGRESS

Mr. Watkins. May I respond to Mr. Swimmer?

Mr. Yates. Of course, you may.

Mr. Watkins. I want to let you know that the Commission and staff are trying their level best to do everything we can to assist Mr. Swimmer and his staff to complete this project, and I hope people testify to that effect, and we are going to continue to have that cooperation.

As far as the relocation effort, Mr. Chairman, as I have said before in testifying, and said to you privately yesterday, our goal is to accomplish the mission that Congress gave to us in 1974. We are attempting to get everybody off the HPL with the assistance of the BIA and Mr. Swimmer, and hopefully we will be in a position in the not-too-distant future to come to you and say it looks like we have completed our task, and let's go out of business. That is where we are.

Mr. Yates. We would like to see you go out of business, too.

What is the status of the relocation effort?

Mr. Watkins. In respect of how many people are moving?

Mr. Yates. Yes. Where are you now, and where do you have to go? What do you have to do, and what remains to be done?

Mr. Watkins. Paul, do you want to respond to that?

Mr. Tessler. Sure. Mr. Chairman, we have received 4,241 applications for benefits. Of these, 2,495 have been determined eligible, 1,679 have been denied. Of those denied, over 500 have appealed their denial administratively. We have completed relocations on over 954 families—that was the figure at the end of March—leaving about 1,506 families remaining to be relocated.

Mr. Yates. Does that figure of 1,506 include those who have been relocated, but are still not located permanently? Namely the 1,200 that we talked about before?

Mr. Tessler. Yes, it does.

Mr. Yates. Incidentally, does BIA agree with the numbers he just quoted?

Mr. Swimmer. Given those numbers, we have 1,215, and we show 248, we are awfully close to the 1,500.

Mr. Yates. Go ahead.

Mr. Tessler. Those are the statistics.

Mr. Yates. What remains to be done, then? How much is it going to cost?

Mr. Watkins. We are waiting for the survey the BIA plans to conduct. That is why the reprogramming is asked for by the Commission, and after the survey is completed, hopefully the BIA and the Commission can again have the same agreement we have now to continue forward in building the homes and completing the task.

REQUIRED FUNDING

Ms. **Massetto**. Congressman Yates, I think we have $95 million that is left to complete relocation with minimal infrastructure, and I would think with an expanded infrastructure, it would be close to $135 million or $140 million. That has no economic development money.

Mr. **Yates**. You mean of the total cost remaining, and you have some still uncommitted?

Ms. **Massetto**. No, that is probably what we need.

Mr. **Watkins**. If you are looking for numbers, Mr. Chairman, we have submitted those numbers to you on numerous occasions. I think it was last year we had spent approximately $85 million, and we were contemplating if we were continuing the way we were, $300 million. But with BIA aboard, it will probably be less money than that for the commission.

Mr. **Yates**. Well, look at Appendix C of your plan, which has a breakdown of what will be required. This appendix shows that from fiscal year 1985 through fiscal year 1993, the budget estimates to complete the program in thousands of dollars. This may go into the record. The plan itself is too large to place into the hearing, it may be placed in the committee's file as a reference. And this indicates the total amount that you need through 1993 to be $224,660,000.

Mr. **Watkins**. Yes, sir. That was projecting our goal of 210 homes a year, and that was before the BIA came on board.

Mike.

Mr. **McAlister**. Mr. Chairman.

Mr. **Yates**. I was going to finish these figures before I yield to you, Mr. Watkins.

The $224 million should have $40 million deducted—oh, you have been getting about $20 million in budget, so that reduces it from the beginning year, which is 1985, to $184 million, which you still need.

Ms. Massetto said you need between $95 million and how much?

REQUIRED FUNDING

Ms. **Massetto**. One-hundred-thirty-five million dollars.

Mr. **Yates**. One-hundred-thirty-five million dollars.

Ms. **Massetto**. That doesn't have economic development money in it.

Mr. **Yates**. How much do you need for economic development? What do you mean by economic development?

Ms. **Massetto**. That is a good question.

Mr. **Yates**. Thank you.

Ms. **Massetto**. The fact is that the current job situation on the new lands is nonexistent, and that if the families are going to be at just a subsistence level economy with "X" number of sheep, people are going to have to have jobs, and someone has to provide that for them.

Mr. **Yates**. Is this the time when I refer back to Mr. Swimmer?

Ms. **Massetto**. I don't know if he wants to field the question or not.

Mr. **Swimmer**. Sure.

Mr. **Yates**. Mr. Swimmer, I guess this is a BIA responsibility, isn't it?

ECONOMIC DEVELOPMENT

Mr. **Swimmer**. It would be. I am not sure—going back to 1974—the intent there. The act talked about having the availability of schools, economic development, clinics and what have you. We have discussed that, and our position on it is that these things would be available in the normal course of the appropriation process. For instance, we have a grant and loan program throughout the Bureau, we have U.S. direct loan programs and guaranteed loans. We would be having to furnish some of our economic development people to the new residents of the new lands once we find out who they are, but as I think would be related, until we do the initial counseling, we don't know what would be needed in terms of job creation, working with the cities and towns around there or, for that matter, even the schools.

Mr. **Yates**. Well, how different would this be than the situation which Indians find themselves in in other cities and towns? There is difficulty of placing them, too, isn't there?

Mr. **Swimmer**. A very similar situation.

Mr. **Yates**. So that they then become a part of the total BIA package for trying to treat the economic problem of the Indian people.

Ms. **Massetto**. Congressman Yates, this has been a special problem. Congress identified the relocation as a special problem back in 1974, and the language of the act specifically said that the United States Government was to minimize the hardships of relocation and to—I mean look at—look at 815 funds now for schools. What are they? They are nonexistent. How do you take something—you are throwing the relocatee families in a competing pot that simmers down constantly.

Mr. **Yates**. What you are saying then, the Congress recognized this might occur, and therefore, it provided that these families should have special consideration.

Ms. **Massetto**. That is right.

Mr. **Yates**. How do you answer that, Mr. Swimmer?

Mr. **Swimmer**. Well, I think to the extent of the resources we have available within our existing budget, we would attempt to target this area, because it is a more recent development. We will have an influx of people there. Until we know how many we have and until we know what services are going to be needed, which again gets back to this work we are trying to do now, and the counseling and the survey issues, we can't even estimate, and I can't present to you in my budget what would be proposed as a special initiative down there.

The Commission started work, and we have followed up on that with the school system at Sanders and received some information from them. We will know the effects of 874 funds, Johnson-O'Malley and others that might be going into the school, and they will have some front-end costs that need to be covered, but until we get an idea of the numbers of children going into that school system, we really can't do the planning.

So I would simply say that if our projections are right, and we can complete the resettlement process in 18 months, that probably in the 1988 budget is when we would be talking about what special targeting needs to be done as far as these particular people are concerned.

BIA RESPONSIBILITIES

Mr. YATES. He raises the same question I raised last year, or earlier, and it isn't a question of Commission competency or lack of competency. The question is to a more efficient operation. Does the transition require consideration as to whether or not the Indians would be better served if instead of having the BIA and the Commission both acting on this, there would be one agency, like the BIA, handling everything? Because you have the job of bringing it to fruition. They don't have that job. They have an initial job, and you are supposed to provide the housing and the economic development, and you are supposed to provide other things as well.

Now, is that done better with two agencies or with one?

Mr. SWIMMER. Well, Mr. Chairman, the act, I believe, called on the Commission to do it. I appear to be the interloper. Perhaps we should look back the other way.

Mr. YATES. It isn't a question of being an interloper or not. The question is——

Mr. SWIMMER. We eventually have to do that.

Mr. YATES. Congress, after 12 years, looks at this and says, we have given this job to the Commission. The Commission has brought it up to a certain point. Then BIA has the task of taking over part of that responsibility.

Mr. WATKINS. May I respond to that?

Mr. YATES. Sure, you may.

Mr. WATKINS. I will get you off the hook there.

Mr. YATES. The committee needs all the help it can get, as do you and BIA.

Mr. WATKINS. In our initial get-together with the three Commissioners and Mr. Swimmer and Mr. Craft, he did say "I will give it all" or "I will take part of it". We wanted him aboard. We think he is a valuable asset in the BIA to be aboard and to be a fourth Commissioner.

Mr. SWIMMER. I haven't accepted the invitation.

COMMISSION PROGRESS

Mr. WATKINS. I want somebody else to take a little of this heat. As Chairman of the Commission, I have one statement, and as a taxpayer, I would like to make another statement.

As Chairman of the Commission, I think the Commission has done an outstanding job over the past 11 years. Of course, as you know, I haven't been on 11 years, and we are coming to the end, we are coming to the completion. I think we are going to get the job accomplished. As Chairman of the Commission, I would say that.

As a taxpayer and knowing what I know about both entities at the present time, I would say that if you wanted to throw the Commission to the BIA, I think it would be a terrible waste of tax dollars, sir.

Mr. YATES. Tell me why.

Mr. WATKINS. I think it would cost millions of dollars more——

Mr. YATES. More than $162 million?

Mr. WATKINS. Yes, sir.

Mr. YATES. As of now, without Ms. Massetto's economic development, the figures show we are going to spend another $162 million—what did the figure say it would cost in 1974? $40 million? I thought it was $40 million, wasn't it, Mr. Atkinson?

Mr. ATKINSON. I think it was less.

Mr. YATES. And we spent $85 million. Eighty-five million dollars has been spent so far, and in prospect, the figure is approaching $200 million—$164 plus your economic assistance, which you said was not part of that budget.

COMPLETION OF RELOCATION

Okay. How much time do you need for spending $164 million plus? When do you think you are going to get the job done? Your witness has testified as to the numbers of people which still remain for transfer. There are other jobs that have to be done in the interim during the transfer. You have to build the housing, you have to provide the schools, you have to provide the infrastructure, socalled. How long is that going to take?

Mr. WATKINS. Sir, you brought up the 1,200 originally, let me get back to that. We have much compassion for the 1,200 people you speak of because they were the original people that stood up and said, "We are voluntarily getting out", they have no bonuses, they had nothing else and by a mandate of Congress, among other things, we have had to move other people in lieu of them.

I feel quite concerned about those individuals. But at the same time, we have to get the people off the land. We think we are going to do that with the help of the BIA. We think we will solve that within the next 18 months. I would say to you, Mr. Chairman, if at the end of 18 months we should have them all off the land, I think things will settle down. That is the time to analyze whether you want the BIA to complete the job or the Commission to stay in business. I think that is the time to——

Mr. YATES. I am not sure I understand your statement fully. I have the impression that you are speaking only about the job of relocating these families. Does that mean that during this period, there should be no other steps taken about constructing schools and about constructing houses? You can't get them off unless you construct houses, and you can't get them off unless you construct roads and communities in order to put them in, right?

Mr. WATKINS. We have no funds for that.

Mr. YATES. You are going to need money. You are going to need $164 million.

Mr. WATKINS. That is where the BIA and others come into play.

Mr. YATES. BIA has a reduced budget, too.

Mr. WATKINS. Yes, sir.

Mr. **Yates**. I don't know how much money you are going to need for this purpose. Is there anything in your budget now that is addressed to this problem?

Mr. **Watkins**. Not other than the specific general appropriations we use in that area, and a couple of million dollars for the grazing improvement on the HPL that we are doing.

INDIVIDUALS AWAITING RELOCATION

Mr. **Yates**. Does the Commission know where all the 1,200 families are located? We have 1,200 families who deserve special consideration, says Chairman Watkins, because they voluntarily agreed with the Commission and went off their land. Do you know where all 1,200 are?

Mr. **Watkins**. Give him a direct answer.

Mr. **Bavasi**. Yes.

Mr. **Yates**. Do you know how they are living, what their needs are?

Mr. **Bavasi**. We can't be specific about all their needs.

Mr. **Yates**. How do you know where they are? Do you have them on computer?

Mr. **Tessler**. Yes.

Mr. **Yates**. Could you furnish the committee with a printout of where they are located?

Mr. **Tessler**. Yes.

Mr. **Yates**. Incidentally, what was your last contact with them? What did you do with the 1,200 now, incidentally? Did you tell them, "We are going to take care of you" and then sit back?

Mr. **Tessler**. To some extent, that is what we did. We have people out every day making door-to-door contact, talking about the status of the relocation program, legislation and what is going on. We have a bimonthly newsletter that goes out to everyone who applies for relocation and everyone who moves. We have been maintaining contact.

Mr. **Yates**. Can all of them read?

Mr. **Tessler**. No.

Mr. **Yates**. What do you do, print it in Navajo?

Mr. **Tessler**. No. There are usually members of the household who will read that letter to them. There is not a written Navajo language.

Mr. **Yates**. There is no——

Mr. **Tessler**. There is a written Navajo language. As I understand, very few people use it.

Mr. **Yates**. You talked to them. You say you talked to 20 families on Big Mountain?

Mr. **Swimmer**. No, they were scattered. The ones I talked to were the physical residents of the HPL. The 1,200 are somewhere else.

Mr. **Yates**. I was going to ask you, did all the people that you talked to speak English?

Mr. **Swimmer**. No.

Mr. **Yates**. Did you have a Navajo interpreter with you?

Mr. **Swimmer**. Yes. For one day, the Navajo Attorney General and a social worker, and another day just the social worker.

Ms. **Massetto**. The fact is the 1,200 certified people sit on the list until—they come up and we assist them to be moved. You get triggered into the system, you are on the top of the list or come within a group move plan. Then you go into our counseling system. It is true, there is public information, but it really isn't—we don't have immediate day-to-day contact, again, until they are triggered into the housing program.

Mr. **Yates**. Perhaps I misunderstood. He said you are sending out newsletters.

Ms. **Massetto**. I guess it is what your standards with dealing with families are. We do not counsel them until they come in to the housing system. Once they are ready and available for a house, then they have——

Mr. **Yates**. How often does that take place?

Ms. **Massetto**. We try to do 220 a year. That has been basically what our numbers have been.

Mr. **Yates**. 220 a year.

Ms. **Massetto**. Yes.

ENHANCED LEVEL OF OPERATION

Mr. **Yates**. That means if you do 200 a year, you have got six years to deal with 1,200. Now suppose you had money to deal with them. Could you provide more than 200 houses a year?

Ms. **Massetto**. We could to a certain extent. Part of the problem Assistant Secretary Swimmer is faced with, because he has an obligation under the law to deal with families that are actually residing out there, is that some of those families are extended families. The 1,200 relate to the number of people that are still out there. How do we mesh those families together? And that is an administrative problem that is a little difficult.

Mr. **Yates**. How did you do it? Are you good at meshing?

Mr. **Swimmer**. In that respect, I think we have made a little bit of progress. We are, in fact, doing it now and as part of our more formal survey, we are finding all the information we can about extended families of those who live on the HPL and trying to make provisions where they can be invitees to the new land.

Mr. **Yates**. We give you how much money a year to take care of 200 homes?

Mr. **Watkins**. $15 million.

Mr. **Yates**. Is that enough?

Mr. **Watkins**. No.

Mr. **Yates**. That is your authorized level.

Mr. **Watkins**. That is our authorization level.

Mr. **Yates**. Two hundred a year?

Mr. **Watkins**. Fifteen million dollars, sir.

Mr. **Yates**. BIA, you are not working on it for the 1,200, you are working on it for the HPL people.

Mr. **Swimmer**. The appropriations was very narrow for the Bureau of Indian Affairs.

Mr. **Yates**. The Senate wanted us to get the people off the land immediately.

Mr. **Swimmer**. That is why we had to enter into the memorandum.

LIVING CONDITIONS OF THOSE AWAITING RELOCATION

Mr. YATES. How are the 1,200 people living now? Are they living in any kind of decent circumstance?

Mr. WATKINS. Mr. Chairman, at our February meeting, when we came back, there was discussion from your staff, and they were concerned about that. Two days before we were called out here, we went back to double-check that and showed staff——

Mr. YATES. I understand we have pictures.

Mr. WATKINS. I brought here the video tapes of the homes they went to see, and none of them were our relocatees.

Mr. YATES. Staff says these are people living in contaminated areas.

Mr. WATKINS. None of them are relocatees, Mr. Chairman.

Mr. YATES. Staff says we were told they were. Who was staff talking to that you weren't talking to?

Mr. WATKINS. I brought the video tape back of the same homes they went to see, because it was our same staff person who took them up there. Mr. Bavasi and I made a quick trip up with--who else was with us. Joe Shelton and I video taped it for them.

Mr. YATES. Off the record, time out.

[Recess.]

Mr. YATES. Nine miles Northeast of Tuba City on Route—is that 16 on out there, or 360?

Mr. WATKINS. 160.

RARE METALS COMMUNITY

Mr. YATES. Outside the administrative area under Bennett Freeze, they can do no repairs—they wouldn't do anything because of the contaminated area. They are living there illegally. And this particular area, our investigator says, they are surrounded or perhaps living in the Rare Metals housing development in condemned buildings. There is no water, there is no electricity for ten homes, it is transient housing in a development across the street from an old uranium processing plant. It is a contaminated area. It will cost $4.8 million to clean it up.

They are certified by the Commission for relocation. They are living there at the present time while they are waiting for new homes. If this keeps up and they are living on radioactive land, they may not be able to enjoy their new homes.

Mr. WATKINS. Mr. Chairman, let me say this one more time. Joe Shelton from our staff took the investigator out to wherever they were going to go. They did come up, and then you asked us to come back on a hurry-up trip, and before we came back for a day and a half I went out in a vehicle with the same Joe Shelton to see the same people and video taped it for you and showed it to committee staff before the last meeting. I don't know about this particular——

Mr. YATES. Mr. Dunkle, our investigator, went out and got it.

Mr. WATKINS. Yes, sir.

Mr. YATES. There is also resident Betty Nez. Do you know about Betty Nez? She is awaiting relocation, and her home is in the contaminated Rare Metals area. This is her home.

Mr. WATKINS. Betty Nez has moved, hasn't she?

Mr. YATES. When did she move?

Mr. **Watkins**. Paul, can you respond to this? Chris?

Mr. **Tessler**. Mr. Chairman, next to the joint use area, the former joint use area we are dealing with, is another area that is also in dispute between the two tribes, that is the Bennett Freeze area. There is a court order——

Mr. **Yates**. Apart from this?

Mr. **Tessler**. Yes. Apart and different from. Development in that area is precluded except for a small area around Tuba City. The area you are speaking of is Northwest of Tuba City off the disputed area. There was a uranium mine there I don't know how many years ago. There was housing there for the people who worked there, and there are people living in that housing while they are awaiting relocation. We have no authority and no funds to deal with those persons.

Mr. **Yates**. Why is that true? I thought you had the authority and funds to deal with relocatees?

Mr. **Tessler**. Yes, we do.

Mr. **Yates**. Why don't you move them out of there to another area?

Mr. **Tessler**. I can't respond to specific names, but our priorities——

Mr. **Yates**. If they are living in a contaminated area and you know they are living there, and even though it is the Bennett Freeze area, why don't you get them out of there?

Mr. **Tessler**. Because, Mr. Chairman, our priorities for the last several years have been the actual residents. These people are among the 1,200 who have not actually been living on the land.

Mr. **Yates**. When you start talking about the actual residents, you are talking about the HPL people?

Mr. **Tessler**. Correct.

Mr. **Yates**. Why don't we take care of both of them?

Ms. **Massetto**. That is right.

Mr. **Watkins**. Good.

Mr. **Yates**. You are taking care of 200 a year. Why don't you take care of the 200 first who are living in the contaminated area? Does somebody want to answer the question?

Mr. **Watkins**. Oh, excuse me. I was trying to find out how many people we are talking about. Is it one family?

Mr. **Yates**. There aren't very many here. Are you allowed to go into the Bennett Freeze area?

Mr. **Tessler**. Travel across it.

Mr. **Yates**. Has anybody been there lately?

Mr. **Tessler**. Not from the Commission.

Mr. **Yates**. Why don't you go there?

Mr. **Tessler**. The matter is still under litigation in dispute.

Mr. **Yates**. I don't care where they are living, they may be living in the Arctic Circle for that matter, but you have the task of taking these people and putting them in suitable homes. Mr. McAlister.

PRIORITIES FOR CONGRESSIONAL DIRECTION

Mr. **McAlister**. The appropriations language for the last three years——

Mr. **Yates**. I know. Has said move those on the HPL.

Mr. **McAlister** [continuing]. Says we cannot use the funds for those not on our currently continously domiciled list.

Mr. **Watkins**. Why don't you change the law and help us out?

Mr. **Yates**. I am going to change the law if I can, but unfortunately I think this is the Senate's view, they want the people off the HPL before anything happens. They are trying to get the people off the HPL as quickly as possible, regardless of how the other 1,200 are living. How long is it going to take to get the people off the HPL? It is going to take another 18 months, at least, isn't it?

Mr. **Swimmer**. Yes.

Mr. **Yates**. Mr. Watkins?

Mr. **Watkins**. Yes.

DEADLINE

Mr. **Yates**. So, in effect, the July 6 deadline doesn't mean very much, does it? You can't get the people out of there by July 6, can you?

Mr. **Watkins**. No, sir.

Mr. **Yates**. Well, you have got to get the people out of the contaminated areas, don't you?

Mr. **Watkins**. Yes, sir. I totally concur.

Mr. **Yates**. How much money do you need for that?

Ms. **Massetto**. We don't know.

Mr. **Watkins**. Mr. McAlister will get back to you.

[The information follows:]

The cost of relocation of the two families living in the Rare Metals area, at an average of approximately $70,000.00 per relocation would be $140,000.00.

Mr. **Yates**. Ms. Massetto was going like this. I am going to put that on the record. She is shaking her head from side to side.

RELOCATEES AWAITING BENEFITS

Ms. **Massetto**. The reason is we have, because of some necessity, created these categories, HPL residents, and now we are into contaminated residents. The fact is, is that back in February, when we were here, I checked the list of the 1,200, and many of those people have been waiting on that list for six to ten years, and they may not be in a contaminated house, but may have to live with their sister and two kids and all those things.

Mr. **Yates**. Do you have places for them to go? Suppose the committee made enough money available for you to move them. We are making money available for 200 movements a year, right?

Ms. **Massetto**. Correct.

Mr. **Yates**. Suppose the committee were to add whatever is necessary and you are going to tell us what that amount is. You have places to place them, to put them?

Ms. **Massetto**. No, not today.

Mr. **Yates**. Then what good is it for me to put money in the bill?

Mr. **Watkins**. Wouldn't it be smart of this Commission to go back and reconfirm the fact there is contamination? We don't know anything about this.

INVESTIGATORS REPORT

Mr. **Yates**. You can confirm that, but regardless of whether there is contamination, you are given the authority to make emergency moves, I think. If you don't—where is Mr. Dunkle? He is now back at the FBI.

I will continue to read from Mr. Dunkle's report. These are his actual notes.

Mr. **Watkins**. Why did we just find this out? I don't know why we are just finding this out.

Mr. **Yates**. I don't either.

TRIBAL NOTIFICATION

Mr. **Watkins**. The Navajo Tribes have not informed us of this.

Mr. **Yates**. All right. Eric, do you know anything about this?

Mr. **Eberhard**. Yes, sir.

Mr. **Yates**. Come up to the table. Tell us why you don't talk to Mr. Watkins. Mr. Eberhard is one of the attorneys for the Navajo Tribe. He said the Navajo never talked to them.

Mr. **Eberhard**. No, sir. This is Mr. Louis Denetsosie, Deputy Attorney General of the Navajo Nation.

Mr. **Yates**. Who do you want to talk?

Mr. **Eberhard**. He is most familiar.

Mr. **Yates**. You are familiar with it. Are you going to corroborate what I have read about people living in contaminated areas?

Mr. **Denetsosie**. Yes. That particular area under discussion, the Freeze area, there are many people who previously resided on the Hopi Partitioned Land that have moved into that area.

Mr. **Yates**. Is that an irradiated area?

Mr. **Denetsosie**. Yes.

Mr. **Yates**. Who says it is?

Mr. **Denetsosie**. The department.

Mr. **Yates**. Which department?

Mr. **Denetsosie**. Office of Surface Mining is right now funding the project to reclaim the area—it has been approved by both Hopis and Navajos. It has been determined to be a hazardous area.

Mr. **Yates**. Who determined that?

Mr. **Eberhard**. The Department of Energy.

Mr. **Yates**. Did they issue a report to you?

Mr. **Eberhard**. Yes, sir.

Mr. **Yates**. Can you make that report available?

Mr. **Eberhard**. Yes, sir.

[**Committee note**.—The report has been provided and is being maintained in committee files.]

Mr. **Yates**. That being true, why didn't you or somebody with the Navajo Nation protest this to the Commission? Mr. Watkins said nobody talked to him.

Mr. **Eberhard**. I believe the Commission has been made repeatedly aware of not only the situation with these families, but the other 1,200 families who live in miserable conditions, subhuman conditions.

Mr. **Yates**. When did you let the Commission know the families were living in this radiated area?

Mr. **Eberhard**. I would have to check our records.

Mr. YATES. You say you have them. Mr. Watkins, why wouldn't you know?

COMMISSIONER RECEIPT OF NOTICE

Mr. WATKINS. I have never received any communication from the Navajo Nation relative to any contamination on that property.

Mr. YATES. Has any of your staff?

Mr. WATKINS. I have never received any correspondence relative to that. And I defy anybody to show me any correspondence.

Mr. YATES. All right. Mr. Eberhard, will you make copies available to the committee?

Mr. EBERHARD. Yes, sir.

Mr. YATES. What is the Navajo story here? You have 1,200 families living in housing that doesn't meet congressional standards.

Mr. EBERHARD. It meets no standard that I am aware of under state or tribal law. These are folks who were essentially forced from the Hopi Partitioned Land through livestock impoundment and other devices, left because they thought that they were no longer welcome on that land and have moved into a variety of circumstances, ranging from tar paper shacks to an area south of Tuba City. In no instance that we are aware of are those folks living in what you would call decent, safe and sanitary housing by any means, Federal, state or local.

Mr. YATES. Does this mean you weren't aware of this, Mr. Watkins, these 1,200 families?

Mr. WATKINS. No, there are 1,200 families out there, and we know some of them are in destitute situations, but we are abiding by the law. May I ask also—he has made a statement, he says he is going to furnish you with letters I have never received. Does he also copy this to the BIA or anybody?

Mr. YATES. Ask him. Mr. Eberhard, what is the answer to that?

Mr. EBERHARD. We will copy everybody.

Mr. YATES. Have you? He says he never got the letters.

Mr. WATKINS. I defy that. He has no correspondence relative to that, and he cannot furnish it to you.

Mr. YATES. Is that true?

TRIBAL NOTIFICATION TO COMMISSIONERS

Mr. EBERHARD. We will check our records and send you everything. I personally have not generated such correspondence. That is not my job.

Mr. YATES. Whose job is it?

Mr. EBERHARD. The Department of Justice, the Office of the Chairman, have sent correspondence to the Commission and others on this issue over the years.

Mr. YATES. Furnish all the correspondence to the committee.

Mr. WATKINS. One more thing, and I will shut up. I really resent his accusations here. Because this Commission is trying its level best to uphold the law and take care of everybody we can with the necessary funds we have, and I resent his implication to you, sir, and to the people here, about the Commission. I think it is a real injustice to us, and it is a real injustice to the relocatees who are our clients. It is a real injustice, and he cannot furnish that material.

Mr. **Yates**. We will see. He says you can't, Mr. Eberhard.

Mr. **Eberhard**. I understand what he says.

[The information follows:]

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

PETERSON ZAH
CHAIRMAN, NAVAJO TRIBAL COUNCIL

EDWARD T. BEGAY
VICE CHAIRMAN, NAVAJO TRIBAL COUNCIL

June 03, 1985

Ms. Thelma Begay
Navajo and Hopi Indian
Relocation Commission
201 East Birch Street
Flagstaff, Arizona 86002

Dear Ms. Begay:

It has come to our attention, that a Mr. Thomas Yazzie is still living in the old condemned Rare Metals housing compound east of Tuba City. The housing compound is approximately a mile north of the inactive uranium mill tailings site which is currently in the process of remedial action under the Uranium Mill Tailings Remedial Action (UMTRA) Project funded by the Department of Energy.

There is a strong possibility that the housing compound will be included in the remedial action. This will only occur if it is determined that the buildings and the immediate area exceeds the U.S. Environmental Protection Agency's radiation standards for Vicinity Properties (gamma, alpha-beta, radon gas, etc.). This has not yet been determined by the DOE. But even if the standards are not exceeded, it is still not recommended for persons to live in those houses, which are condemned and associated with health hazard from radiation. If it is found that the standards are exceeded, the occupants would have to move from further impact by both radiation and contamination of water supplies.

Therefore, it is our strongest and highest recommendation that Mr. Thomas Yazzie, as one of your case-client be considered for housing from which you have authority to select for voluntary Relocation Benefits.

If you have any further questions, please do not hesitate to call our office at 602/871-6631 or 6639.

Sincerely,

Louise A. Linkin, Director
Environmental Protection
Administration

COPY

STATE OF ARIZONA (
:SS
COUNTY OF COCONINO)

AFFIDAVIT OF THOMAS YAZZIE

I, Thomas Yazzie, sworn under oath hereby state as follows:

1. I am an enrolled member of the Navajo Tribe, census number 118,492.

2. My mailing address is P.O. Box 2903, Tuba City, Arizona.

3. I presently live at Rare Metals located about 7 miles northwest of the junction of Highway 264 and 160. Rare Metals is housing that was given by a Uranium Mining Company to the Tuba City Chapter. Uranium tailing piles are located about 1/2 mile east of the Rare Metals housing.

4. My wife and I have lived in Rare Metals housing since 1980. My young son was born on December 4, 1981 and has lived in Rare Metals housing all his life.

5. My family and I are living in the housing because my wife and I are employed in Tuba City and could find no other place to live in Tuba City. Just prior to moving into Rare Metals Housing we had been commuting to work from Cedar Ridge, a community about 50 miles from Tuba City.

6. Last year around April, after I received notice from the Relocation Commission that I was certified eligible for relocation assistance benefits, I went to the Commission. I visited the Commission for the purpose of explaining that I was living at Rare Metals Housing; that

due to the radiation there the health of my family and me was in danger; and that I needed to receive my housing benefits as soon as possible. I was informed that I could not receive such benefits in the near future because I had no homesite lease.

7. My Relocation Commission case worker, Thelma Begay, explained the temporary emergency move regulations but said I was not currently living on HPL and would not be eligible for an emergency move. I told Thelma I wanted to be considered anyway and hoped that the Commission would review my story and supporting documents.

8. I then set about gathering documents to submit to the Commission. I was aware that the Environmental Protection office had studied the area around Rare Metals, so I called the Navajo Tribal Environmental Protection Commission and explained to Louise Lincoln, the Director, that I was living at Rare Metals housing. I asked Ms. Lincoln if she would write a letter to the Commission explaining the health hazard to me and my family at Rare Metals. Ms. Lincoln did write such a letter to the Commission and also supplied me with a copy.

9. Sometime later I was advised by the Commission that it was determined that my situation was not critical enough, and that the temporary emergency housing funds were only for elderly or handicapped persons currently living on Hopi Partitioned Lands. I was therefore denied emergency housing benefits.

10. The Commission also informed me that construction on my relocation home could not be expedited because it had become a policy of the Commission that persons currently living on Hopi Partitioned Lands would be relocated before all else. The Commission estimated that it could take about four years to receive my housing benefits.

11. I made several phone calls to the Commission trying to find a way to expedite construction on my home so that we could move away from Rare Metals housing.

12. Just about three weeks ago, in order to avoid the impossible task of getting a homesite lease in Tuba City, I returned to the Commission to discuss an off reservation move. The Commission advised me that commuting between Flagstaff and Tuba City would be too much of a burden, I was told that we cannot move to an off reservation town unless we are working in the off reservation community.

13. As yet the Commission has been unable or unwilling to assist me in obtaining my relocation home so that my family and I could live in a safe living area.

Thomas Yazzie

Subscribed and Sworn to before me this 3 day of April, 1986.

Notary Public

EMERGENCY MOVE PROCESS

Mr. **McAlister**. Mr. Chairman, if I could add, the Commission does have emergency move procedures. They are published in the regulations. They contact the Commission regarding emergency conditions. There is a process that we go through. Now as it happens, there is no doubt about the fact that because of the standard of living conditions all over the areas they have moved to, many of those people do not meet our requirements although they think they are in an emergency situation, we can't come to an agreement to that and still have any kind of prioritized system. Our emergency requirements are pretty stringent.

However, it is my understanding when Mr. Watkins went to that——

Mr. **Yates**. Is the question of living in an irradiated area——

Mr. **McAlister**. We have received no application from anybody——

Mr. **Yates**. Why must you receive their application? Is there no responsibility or duty on the part of the Commission?

Mr. **McAlister**. When Mr. Shelton went to that area and tried to identify those who were relocatees, he couldn't identify anyone there who was a relocatee. He was ready to take those names and explain to them the process. Mr. Watkins spent a day and a half up there and did not identify anyone.

PHYSICAL LOCATION OF CLIENTS AWAITING RELOCATION

Mr. **Yates**. How do you reconcile that testimony with the statement of your colleague that you have the names and the addresses of the relocatees? I have the impression from his testimony, you could go out there to where the relocatees are living.

Mr. **Tessler**. Our addresses in most cases are post office boxes in Tuba City, they aren't house addresses.

Mr. **Yates**. Then you don't know where they are living.

Mr. **Tessler**. Of course, we do. We have a mailing address for all of them.

Mr. **Yates**. It is a post office box. You go to a post office box, they are not living in the box. According to what Mr. McAlister has told us, you don't know where they are.

Mr. **Tessler**. We do.

Mr. **Yates**. He just got through saying he can't identify them from the people who are not relocating. Didn't you just say that?

Mr. **McAlister**. No, sir. I said on the site, when there, Mr. Shelton, who speaks the language, spoke to everyone they contacted who was there living in those conditions in the area we were sent to by the information we got from your staff, and was unable to identify any relocatees. That is what I said. It is true that the population is extremely mobile, and they do not have a single site at which we can regularly identify them.

Mr. **Yates**. Mr. McAlister, can you go out there without Mr. Shelton or with Mr. Shelton and identify the relocatees?

Mr. **McAlister**. I am sorry? You mean in that area?

Mr. **Yates**. Yes. Wherever.

Mr. **McAlister**. Of course.

Mr. **Yates**. I thought you just said Mr. Shelton couldn't.

Mr. **McAlister**. We cannot produce for you, Mr. Chairman, at any given point in time a computerized list of physical addresses, because there are no physical addresses on the reservation other than the mailing addresses. We have quad locations for maps as to where their original home site was, and as there is a requirement to contact relocatees, the information of where they are currently staying is updated. They may be with one extended family member in one part of the existing reservation if they have already left the HPL this month——

Mr. **Yates**. The only contact with them is through a mailing address?

Mr. **McAlister**. The only official contact.

Mr. **Yates**. The only contact. You don't know who these 1,200 families are. You just know you have mailing addresses for them, is that right?

Mr. **Tessler**. We know who they are. We have a file.

Mr. **Yates**. Yes, but you have a mailing address for them. You don't know what their condition is, you haven't looked at them. You know when you want to get in touch with them, you send them a letter to a post office box. You don't know what they are like, where they are living, or anything else.

Mr. **Tessler**. We know what they are like, and in most cases where they are living. If we had to make a contact with that person, if you said "Go visit one of these people," we would go—first we would go to a post office address or off-reservation address——

Mr. **Yates**. Mr. McAlister has just testified you went out there, or he went out there with Mr. Shelton, a Navajo, and he couldn't identify the relocatees?

Mr. **McAlister**. None of them identified themselves as relocatees.

Mr. **Yates**. Did you find the relocatees?

Mr. **McAlister**. There weren't any. In the area we were sent to, none of the people there were relocatees.

Mr. **Yates**. What area?

Mr. **Watkins**. Tuba City.

Mr. **Yates**. You mean the people that I have talked about in this area, Northeast of Tuba, the Rare Metals housing development, you went out there, and they didn't identify themselves?

Mr. **Tessler**. We did not go there. Mr. Dunkle visited several days before Mr. Watkins and I went out. We went to the very same people Mr. Dunkle told us about, but he never mentioned any of these people in the Rare Metals area. This is the very first time we have heard of this.

But, in fact, that was Mr. Dunkle's last day of working for the committee, as I understand it. Tuba City, we thought, was the concern that you had, Mr. Yates.

Mr. **Yates**. What you are saying then is the information I have from Mr. Dunkle may not pertain to relocatees?

Mr. **Tessler**. It may not.

INVESTIGATORS NOTES

Mr. YATES. These are notes that go along with the pictures taken by the investigator, Mr. Dunkle, of the House of Representatives Appropriations Committee Investigative Staff. Mr. Dunkle worked for the FBI. He is an investigator, and so he has taken pictures in Tuba City and in South Tuba, and in an area around Tuba, in the Bennett Freeze and other areas on both sides of the street and in Northeast Tuba. This is Mr. Dunkle. I have no reason to doubt this employee from the FBI isn't telling this committee the truth.
mittee the truth.

He has this code, "C", which means certified, awaiting relocation; "R", a relocatee; "O" is other. On January 27, 1986, in Tuba City, "R", a relocatee. He has a picture of an earlier relocatee home from 1978 to 1979 before the present housing standards.

That is picture number 1. A fairly presentable kind of house, judging from the picture. This is the earlier relocation home in Tuba City in 1978 and 1979. Number 2 shows the same home.

Number 3 is a "R". That is a relocation home. It is a double unit trailer. And that is in Tuba City. Number 4, "O" is other; Number 5 is a question mark living in a hogan house, maybe temporary housing, the guide didn't know. He was out there with Mr. Shelton, incidentally. "O", occupants have been there for some time in Number 6.

Number 7 question mark, general conditions of the area—let's see number 7. He didn't know whether they were "O", "R" or "C", and this shows you shacks pretty much where they are living. Comments about South Tuba are bad soil, desert-like, no gardens, typical of entire reservation and a lot of the area on HPL.

Number 11 is an example of a hogan.

He was accompanied by employee, Joe Shelton, who works for you, right?

Mr. WATKINS. Yes, sir.

Mr. YATES. Number 12 is West Tuba in an area of the Bennett Freeze, January 28, 1986. Oh, my goodness. Take a look at that, Mr. Chairman. That is certified.

Mr. WATKINS. He is not a relocatee.

Mr. YATES. He is not?

Mr. WATKINS. No, sir. He is not a relocatee. We went back and checked him.

Mr. YATES. It says "Frank Bedonic, census number 2868, temporarily in area".

Mr. TESSLER. I don't remember that picture.

Mr. WATKINS. That looks like the house.

Mr. YATES. Someone was out in the Bennett Freeze area, weren't they? That is where the picture was taken.

Mr. WATKINS. We have the tape, sir, we gave to your staff.

Mr. YATES. Bennett Freeze, no repairs or construction. He has a drinking problem, he is in the process of building a hut. He is a squatter. Number 13 is an "O", so it is other than relocatee or certification, Frank and Betty Yazzie, the front of their home out there. You can see what their home is out there. Apparently they are not your responsibility, are they, if they are not relocatees or certified?

Mr. **Watkins**. That is right.

Mr. **Yates**. All right. Then we have in South Tuba, number 17. This is the trailer. Ned and Bessie Nez's trailer on Ned's sister's homesite lease. They can't do anything so long as they have a homesite lease. Oh, they are in an administrative area, not the Freeze area. Then there is an "O", number 18, trailer. "R" is a relocatee, number 19, village home. It doesn't look too bad. It is the property of Harold and Carmalita Hernasy. You have spent, it says here, over $20,000 to repair, and it is still not right, according to this. The floor is still not right according to them.

Number 20 is a relocatee. What is number 20? Example of two relocatee homes. All right. "C", certified. Twenty-one. Then Dan Hatathlie, from the Coal Mine Mesa—he is certified. That is where he is living. And he is awaiting a homesite lease in South Tuba, not sure whose land he is on. Are homes like this on reservation?

I won't talk about the "O's". "C", South Tuba in the Bennett Freeze area, number 23. That is Harold and Sally McCabe, what do these census numbers mean? Is that your census?

Mr. **McAlister**. No, those are tribal census numbers.

Mr. **Yates**. Twenty persons are living in the house, seven are eligible for benefits, six have just received homesite leases and will be moving behind this home and building on a half acre lot. It must be inside the administrative area. They have been waiting on a homesite lease for six years Certified eligible in 1976 and 1977.

All right, in the Bennett Freeze, East Tuba, certified, number 25. They don't want to move, in their 80's, living illegally on their daughter's land. Joe and Rena Williams. They have an extension cord for electricity from their daughter's home, no water, dirt floor, they say "no" to new lands. They need to stay near their family because of their age, they are crippled, and they have been awaiting relocation six years. They have no homesite lease. Living illegally on daughter's land.

And then you have got numbers 27 and 28. These are the Rare Metal houses, which are condemned buildings, no water, no electricity, in transient housing development, across the street from old uranium processing plant, contaminated area. "C" is the home of Betty Nez. That is in the Rare Metals area near a uranium processing plant. Number 29 is the same house.

Number 30 is "C", certified. Rare metals housing development, photo from Route 160.

Then Navajo housing authority for zero people, and that shows other types of housing. "R" is a relocatee in number 34. Relocatee homes with water or electricity, resident Mary Jane Chessie Relocated 1983. And then number 35, the same as above, the home belongs to Mary's mother, Alice.

Then downtown Tuba City, a photo of the trading post. That is just for the Chamber of Commerce. Babbit's Trading Post, and vicinity. The west side of the road, and so forth.

We know now, I take it, from what he says, and perhaps I should have him here this morning. We know from what he says you have some of your certified people living in an area close to Tuba City, which is a condemned area. But you don't have any money to do anything about it, do you?

Mr. **Watkins**. May I say this, please?

Mr. **Yates**. Sure, you may.

Mr. **Watkins**. It is important, I agree, and we were not aware of this, if it is a fact. But I want to reassure the Chairman that we want to correct this if you can make it legally possible for us. As far as these homes are concerned, let me reaffirm, please, for the record, that we were as concerned as you when Mr. Dunkle—I have no reason to dispute Mr. Dunkle, he is a very honorable man. He told us, and Joe took us, Paul, Chris and myself, we spent a day and a half before we flew back here the last time in a hurry-up trip to get the information you wanted.

We showed your staff the video tape of the places we went to, and I can verify it, and the three of us can verify it, there was one person who said they were a relocatee. We went back and found out that he was not a relocatee. He was incorrect. Now, is that correct? Is that a correct statement?

Mr. **Tessler**. It is true. We didn't see all the people Mr. Dunkle did, and that report was never furnished to us.

Mr. **Yates**. Well, these are his notes which accompany the pictures.

Mr. **Tessler**. I know he had to leave quickly to go to another assignment and maybe he never formalized that to you?

Mr. **Yates**. To the best of my knowledge, it hasn't been.

Mr. **Watkins**. I wish we had known it before now, sir. We could have tried to correct it.

CONGRESSIONAL PRIORITIES

Mr. **Yates**. But you can't correct it. You can't move them, you don't have any money, and that is the Congress' fault, not yours. The Congress has said "Get the people off the Hopi Partitioned Land. We have to take care of this." You are not going to be able to get them off for another 18 months, and during that period, they are going to take a look at the people living in Tuba City and say "Why should we get off the land and live like that?" Right, Mr. Swimmer?

Mr. **Swimmer**. That can be part of the problem, yes.

Mr. **Yates**. What should we do? Do you want more money to do it? This isn't your problem, is it? You just have Hopi Partitioned Land to take care of?

Mr. **Swimmer**. I have sufficient funds to build the housing for the people on the Hopi Partitioned Land. In fact, I have excess funds.

Mr. **Yates**. As I understand his testimony, the Congress has done nothing for these relocatees, right?

Ms. **Massetto**. Which ones?

Mr. **Yates**. The 1,200 families?

Ms. **Massetto**. Right.

Mr. **Yates**. Are you giving them any money at all?

Ms. **Massetto**. No.

Mr. **Yates**. How are they living? Are you giving them money?

Mr. **Swimmer**. They would qualify for a social services program. General assistance.

Mr. **Yates**. Do you know whether they are getting it?

Mr. **Tessler**. We would have records if they are receiving public assistance, and many of them are.

Mr. **Yates**. Would you furnish the committee with your records of the relocatees on public assistance please, or on any of the other welfare programs?

[The information follows:]

The most current available data indicates that approximately 46% of certified relocatees receive public assistance (A.F.D.C. and General Assistance).

USE OF BONUSES FOR RELIEF

Mr. **Watkins**. In our meeting yesterday, I discussed with you another route that Mr. Swimmer has discussed with the Commission that we are investigating, and that is the possibility, because all of the bonus monies are given to the relocatee after they relocate, we are looking into the legal ramifications and possibility to see, if the other two Commissioners would concur, if we might be able to give them a partial payment of their bonus to eliminate some of the suffering. We can't do it for everybody.

Mr. **Yates**. We have our share of the blame, too. And it suddenly occurs to me again, in the words of Ms. Massetto a few minutes ago, why are the people who are being relocated from HPL given better treatment than those who went out before? Why should those who are still living there, and apparently are not inclined to move, why are they entitled to be given the special preference that Congress has provided and Mr. Swimmer is carrying out?

Mr. **Watkins**. There is no justice, that is correct, on that portion of it.

Mr. **Yates**. The only thing is the deadline, which can't be met anyway, right?

Mr. **Watkins**. There is no justice for those people who obeyed the law, went off the HPL in good faith. We can't help them.

Mr. **Yates**. Suppose we were to provide money in a bill to take care of those who have complied with the law and voluntarily relocated. Where would you put them, do you know yet?

Mr. **Watkins**. We would move them.

NEW LANDS COMMUNITIES

Mr. **Yates**. I know you would move them. That is what I am afraid of. I want to know where you would move them.

Now, Mr. Swimmer is going to have a nice community, aren't you? You are not going to move them until you have a nice community, are you, Mr. Swimmer?

Mr. **Swimmer**. We are moving them in accordance with the lifestyle they have now. Many of them won't be in a community as such, but they will be located where they have access to grazing, there will be some extended families. We anticipate——

Mr. **Yates**. The children will have access to schools?

Mr. **Swimmer**. We certainly hope so.

Mr. **Yates**. Well, where will they go to school?

Mr. **Swimmer**. Right now it appears Sanders.

Mr. **Yates**. You are saying, "Look, you are giving us something to do here, but there is a whole job you haven't given us we have to do too." Do you need more money for the schools?

Mr. **Swimmer**. Not at this time, because I don't know what the situation is.

Mr. **Yates**. When will you know?

Mr. **Swimmer**. We hope to know—if we can get the funding, we need to proceed with the counseling and all from the Relocation Commission, we will be able to start the counseling within about four months, then we should have a pretty good idea of where we stand.

Mr. **Yates**. We have a reprogramming request for how much money?

Mr. **Swimmer**. $474 million, I believe.

[Committee note.—The reprogramming request was for $468,790.]

Mr. **Yates**. Now?

SURVEYING THOSE WHO MOVED PURSUANT TO THE ACT

Mr. **Swimmer**. Now. The important thing, though, and it has just been touched on here, the same kind of work must be done for the 1,200 people.

Mr. **Yates**. Say that again?

Mr. **Swimmer**. The same kind of counseling eventually has to be done for the 1,200. We have to go out to those people and find them and work with them and see what their circumstances are. We are talking about these kinds of plans that have been talked about for years, but if they are not done, we will never achieve successful relocation of all the people that were certified as eligible. That is why we are making this extra effort with the 248 families that are officially residents of HPL, not only so we can move them in a more expeditious and humane way, but so that when they get moved, we don't have a recurring problem losing homes down the road. The 1,215, the Commission also has money in its counseling budget, and they have to do this kind of counseling.

Mr. **Yates**. How much money do you have for counseling, and how many do you have?

COUNSELING

Mr. **Watkins**. We have eight counselors, but we are working on the post-move, because you brought it to our attention. We are aware of the problems, and we have three contracts right now: the Navajo Nation, Navajo County and NACA, all three have proposed bids in for this. Paul?

[Committee note.—The Commission corrected the testimony to six counselors.]

Mr. **Tessler**. Yes.

Mr. **Yates**. For what?

Mr. **Watkins**. For post-move counseling, sir. Tell him about it.

Mr. **Yates**. I think he is talking about pre-move counseling.

Mr. **Swimmer**. Yes.

Mr. **Yates**. Post-move counseling is one thing, pre-move counseling is another. Do you have funds for pre-move counseling? You are not even worried about pre-move counseling because you don't have money to move them, right?

Mr. **Watkins**. We have eight people right now. It is in this budget.

Mr. **Yates**. That is for the pre-move people. You don't have any pre-move counseling money, do you?

Mr. **Watkins**. Yes, sir.

Mr. **Yates**. But you are not pre-move counseling because you don't have anywhere to move them. You have been moving 200 families a year?

Mr. **Tessler**. Yes.

Mr. **Yates**. Let me ask you a question now. Where do you move the 200 families?

Mr. **Tessler**. They have moved on the reservation, and some of them have moved off the reservation.

Mr. **Yates**. If my memory is right, we have a sentence in our conference report saying you can't put them on the reservation any more.

Mr. **Watkins**. Mr. Chairman, may I refresh your memory?

Mr. **Yates**. You may.

Mr. **Watkins**. Back in February, in order to help alleviate the 1,200 family problem, I suggested and talked to you about cash equivalency, but nothing became of that. Is there any interest on your part for the 1,200?

Mr. **Yates**. What does that mean? Buy them out? No, I would think it wouldn't be very good, Mr. Watkins, and I will tell you why. On the basis of past history, where you have given them homes and they have sold the homes, they wind up in the shacks. It is kind of like another Trail of Tears, isn't it, Mr. Swimmer?

Mr. **Watkins**. What about giving them some of the partial bonus payments? Do you have any feeling on that, sir?

Mr. **Yates**. I want to get this job done. I want to get the job done not only for the HPL people, but also for the 1200 families who have moved. How do we get it done? It is going to cost, oh, gosh, close to $200 million apparently to get it done in over a period of six years. Is that for all the HPLs and the 1,200?

ENHANCED LEVEL OF EFFORT

Mr. **Watkins**. Mr. Chairman, I don't think it will take six years if BIA is working with us. I would say—what would you guess, two years, Paul?

Mr. **Tessler**. I would say that would be a good guess.

Mr. **Yates**. For what? Complete relocation from the lands plus the 1,200 families?

Mr. **Tessler**. Everybody. However, that is going to require doubling our staff and lots of housing money.

Mr. **Yates**. Why will it double your staff if you have the BIA staff for that?

Mr. **Tessler**. There is no BIA staff for that.

Mr. **Yates**. There isn't? The only one working on it is Mr. Swimmer.

Mr. **Swimmer**. So far.

Mr. **Watkins**. That is the reason for the reprogramming money.

Mr. **Swimmer**. We are attempting to assign staff to the project, and it will be paid for in the reprogramming.

ELIGIBILITY FOR THE NEW LANDS

Ms. **MASSETTO**. Congressman Yates, part of the problem in our so-called "counseling system" is that people come in and say "Where can I go, where can I move?" And the counselors say "We don't know if you can move to the new lands because there hasn't been a policy decision about who can go to the new land." This is what Mr. Swimmer is trying to do right now. That is part of the decision making.

Mr. **YATES**. Mr. Swimmer, when will your new lands be ready?

Mr. **SWIMMER**. They are ready as soon as we have the counseling done and the people ready for the move, and we will develop homesites as we go with water and electricity available to them.

NEW LANDS DEVELOPMENT

Mr. **YATES**. Shouldn't you develop the water and electricity and homesites during the same period?

Mr. **SWIMMER**. They will be simultaneously. Indian Health Service will be working on a community water system, but we can't put in a community-wide water system until we have the surveys and evaluations with the people. In some cases, we will move families to grazing homesites where they will have access to water. It might be well water, it might be windmill water, it might be water that is already in place, and those are sites we would attempt to use first, depending on the need of the people, and to get some kind of electricity there, whether it is photovoltaic cells or electric lines there.

In fact, it is not practical to go in and to do a 250,000-acre development without knowing the characteristics of the families going there. But it doesn't have to be a chicken and egg, we can do it simultaneously. As we work with the people and determine what the needs are and we get family groups and grazing groups that want to move and they have selected sites on the new land, we can begin those moves. Some of the infrastructure might be temporary, but we believe we can eliminate any duplication.

For instance, if it is windmill water, we can make that so later on if they are hooked up to a regular water system, the windmill could be used for agricultural purposes. But there might be some of that, some limited duplication, but we discussed it with Indian Health Service, and I believe it is workable to do this.

Mr. **YATES**. Are they part of your MOU?

Mr. **SWIMMER**. They agreed to become part of it. At a meeting we had almost three weeks ago, we invited them to be a part of it. They had already developed a proposed plan that would be part of the MOU, and we said staple it to it, we will endorse it. Following that meeting, the task force incorporated one of the IHS people, Mr. Lincoln, I believe it is, locally in the task force, and they have been meeting with him regularly.

Mr. **YATES**. Is the Commission part of the task force?

Mr. **SWIMMER**. The Commission is not assigned to the task force nor the tribes. The task force are my employees, area office people and immediate staff, together with the Indian Health Service representative that has been putting together the BIA's portion of the Memorandum of Understanding. Not to imply there is an exclusion of anybody, and we heard that from the Navajo also, well, who are not a signatory to the task force or to the MOU.

Mr. YATES. What does that mean, they are not a signatory to it, they don't want to cooperate with you?

Mr. SWIMMER. No, it is that there was nothing for them to sign. I mean, they are not a part of the Memorandum of Understanding, as far as the tribe is concerned. It is between the Relocation Commission and the Bureau of Indian Affairs, two Federal agencies, and Indian Health Service being incorporated into it. But there was a question about the tribes actually being a signatory.

What we have asked for them to do is participate fully with us in the planning.

Mr. YATES. What has been their response?

Mr. SWIMMER. They have been and continue to be. The task force——

Mr. YATES. That is for those on the HPL?

Mr. SWIMMER. That is right.

RESPONSIBILITY FOR NON-HPL CLIENTS

Mr. YATES. Do you have anything to do with the 1,200 families and their conditions?

Mr. SWIMMER. Not as far as relocation is concerned.

Mr. YATES. Why not? Why shouldn't you? All of a sudden, why is there this split, I wonder? Why should you be concerned only with—what is it, how many families, 400?

Mr. SWIMMER. 240.

Mr. YATES. You have 1,200 here in worse condition.

Mr. SWIMMER. I believe in the authorizing language we were not included.

Mr. YATES. I know you weren't. I am trying to find out whether that ought to be changed. You are working with the Commission on this. Why shouldn't your responsibility be expanded? I mean, the Commission should do it, too, besides, Mr. Watkins. Why shouldn't the responsibility that you have been assigned for HPL be expanded to include the 1,200 so that there is some activity to take care of them?

Mr. SWIMMER. I think——

Mr. YATES. Will the lands you are looking at be large enough to take care of the 1,200 and 240?

Mr. SWIMMER. No.

Mr. YATES. How many will it take care of?

Mr. SWIMMER. We estimate with grazing privileges, somewhere between 200 or 300 families. There would also be room for extended family homesites without grazing, and we don't know what the demand will be. The capacity would be for several hundred, but we don't know yet what the demographics are of that. I don't think it is practical to look at the entire 1,200 to be on the new land.

Mr. YATES. Should I ask BLM to look for additional land for the 1,200 families?

Mr. SWIMMER. The Navajo Tribe has 317 sites available for present families now, that is of the total 1,500. I don't know how many are physically resident of the HPL and how many are the 1,215, but obviously 100 or so are the 1,200.

Mr. **Yates**. What about homesite leases on the reservation?

Mr. **Swimmer**. As I said, they have advised me there are 317 of those available.

Mr. **Yates**. That leaves another 900.

Mr. **Swimmer**. That is right.

Mr. **Yates**. Where are we going to put the 900, Mr. Watkins?

Mr. **Watkins**. Excuse me, Mr. Chairman, the percentage of number of people going to the new lands, I don't know what the percentages are, but they won't all want to move to new lands.

FORECAST OF NUMBERS PER SITE OPTION

Mr. **Tessler**. Of the 1,200 non-HPL residents, we anticipate the new lands, in that report, to take about 800 to 850 people. One hundred fifty to 200 then would be in a grazing setting, and other of their extended families would choose to live in the same area with them, which is essential to successful relocation.

We also thought that another several hundred would be in some sort of rural community on the new lands.

Mr. **Yates**. All right. Again I get back to my question: Suppose we made more money available, where would you put them? Do you have places to put them if you had the money to relocate? You have 200 a year now. Where do you put the 200 a year?

Mr. **Watkins**. Wherever they want to go.

Mr. **Yates**. Where do they go?

Mr. **Tessler**. Sixty percent remain on reservation and 40 percent off. Rough figures. On reservation, the only choices they have are to get a homesite lease on the reservation, which the tribe has provided over 600 over the past years. That is a lengthy process. But those who want to stay on the Navajo Reservation must have a homesite lease. There are people who want to move to border towns or to places off the reservation.

Mr. **Yates**. What is a homesite lease? What does that entitle them to?

Mr. **Tessler**. It is a one-acre parcel given by the tribe, with the BIA's approval, to an individual to build a home on it. It does not provide for grazing or anything like that, it is just a reservation site.

Mr. **Yates**. That is tough, because each chapter has to vote on it.

Mr. **Tessler**. Yes. The local users vote on it first, the people in the very same area.

Mr. **Yates**. Families.

Mr. **Tessler**. Yes.

Mr. **Yates**. So 200 a year, you don't have a great problem then, or do you?

Mr. **Tessler**. We have been moving 200 a year for the past three years.

STAFF NEEDS FOR INCREASED ACTIVITY

Mr. **Yates**. Can you move 400 a year?

Mr. **Tessler**. We couldn't do that with present staff. We would need an increase in staff.

Mr. **Yates**. What size staff are you talking about?

Mr. **Tessler**. I am trying to think of my estimates for 1987.

Mr. YATES. How much staff do you have now?

Mr. TESSLER. We have a total of 53. We could probably move as many as 250 a year with current staff. If you asked us to move 300 a year, we would need an additional two staff; and if you wanted us to move 400 a year, we would need about 12 more people.

Mr. YATES. Does that include added counselling, pre-move and post-move?

Mr. TESSLER. Yes, it would.

Mr. WATKINS. Those additions——

Mr. YATES. Do you have those people on your staff now, Mr. Swimmer?

Mr. SWIMMER. No, not yet.

Mr. YATES. Counselors?

Mr. SWIMMER. Not yet.

Mr. YATES. Do you have them on the BIA staff?

Mr. SWIMMER. We have some that would be available to us. We will have to acquire others.

Mr. YATES. How much money do you need for another 200 people a year?

Mr. TESSLER. Two hundred houses would require about another $15 million. I can't give you the staff costs off the top of my head. We will submit that.

Mr. YATES. Submit for the record what you would need to increase the number to 400.

[The information follows:]

The detailed breakdown of the staff incrase needed to complete 400 relocations per year is as follows:

3 Pre-Move Counseling Specialists at $21,596 equals	$64,788
2 Real Estate Specialists at 21,596 equals	43,192
1 Senior Pre-Move Counseling Spec at 31,000 equals	31,000
1 Senior Real Estate Specialist at 31,000 equals	31,000
1 Housing Inspector at 19,219 equals	19,219
1 Accounting Clerk at 14,777 equals	14,777
2 Clerical Positions at 12,764 equals	25,528
1 Personnel Clerk at 12,764 equals	12,764
Total	$242,268

Mr. YATES. You couldn't have more than 400, could you? Could the area absorb them?

Mr. TESSLER. There is a question of how quick homesite leases would be processed and how quickly new lands would be available. I think that is—more than 500 a year tops would be stretching things.

SITE SELECTION

Ms. MASSETTO. Why can't we find out where they are going to move before? I don't understand that. Why don't we know now? Why can't we ask the people where they want to move?

Mr. YATES. Why are you asking me?

Ms. MASSETTO. I am confused about the planning.

Mr. YATES. I asked that question.

Mr. WATKINS. We have that information in the computer where they want to move. They have been asked that. That is what the survey is for, to get the final final final.

Mr. YATES. Give us a printout of that information, if indeed you have it, as to where all of them want to move.

Presumably you have analyzed that. You have a printout of where they want to move, right?

Mr. TESSLER. We have not——

Mr. YATES. You said you have got that information in the computer.

Mr. TESSLER. I will let Mr. McAlister respond to that. We don't have specific sites for specific people. We are not expected to.

Mr. YATES. Mr. McAlister.

SITE SELECTION RATIONALE

Mr. MCALISTER. I think we began to go through this process in early February.

Mr. YATES. Speak to him. It is more important.

Mr. MCALISTER. Our clients have always been allowed their own choice and have been allowed to change that decision right up to the last minute. We generally have an early indication. For instance, if somebody indicates a desire to go to the existing reservation, because that is a long process at best, even though we have sped it up by helping to finance some extra people at the tribe to do this for our clients, that has to be made early on.

Many people have gotten homesite leases and subsequently decided not to use them. They have that choice right up to the moment they sign a contract for new construction on a home or to buy an existing home. If they meet our qualification to move off reservation, which is the 25 percent rule, they must have demonstrated enough income to support an off-reservation home. That was added after we had a problem with people losing homes.

The same thing will be true throughout the process in terms of our not identifying locations and telling people to go to them. It would not only be—not only do we not have specifically what address somebody is going to or what parcel on the new lands, it would not be appropriate. It would be, in my opinion, a waste of funds, because these people can and do change their minds right up to the last moment.

What we do have and what we have provided in the new lands plan is a cluster siting situation. Mr. Swimmer indicates the survey may result in some changes in that rationale, but basically the same idea. There is "X" amount of land that will support so many people. We have 22 grazing units. We know how many—we have the specific cluster sites, these may change, but we have them identified. The results of Mr. Swimmer's survey may change. We know what the support capacity are of those.

We have preliminary planning on the road systems and utility systems into those areas. In our report, we estimate there are 150 grazing permits based on the carrying capacity of the land. Our statistics also indicate that there are about three extended family members for each one of these grazing permitees, so we estimate approximately 600 people would go to these 22 grazing units on the cluster sites. The number of homesite leases we have had in the past and the percentage of people that followed through with their leases led us to predict about 400 people of those remaining would go to homesite leases on the reservation. Those are locations of their choosing once they get that approval. We don't make that determination. We estimate that about 300 people would move off reservation.

Now, we backed into the rural community because there was some conversation perhaps this was an inappropriate lifestyle for traditional Navajos. Our staff believes there is a sufficient number of younger, more in cultured Navajo clients who would prefer the rural community. In fact, we have some testimony to that effect. We were left with 200 to 250 living in rural communities.

So my point is, it is not only practically undoable, but inappropriate to spend a great deal of time to tie specific clients to specific addresses because people can change their opinion, and circumstances change right up to the time you move them.

SURVEY OF THOSE OFF THE HPL

Mr. YATES. Well, is there any kind of hope and proposal to have an assembly of the 1,200 families, or representatives of the 1,200 families, maybe sponsored by the Navajo Tribe to find out where they are going to go, so we know definitely once and for all where to move? As of now, it is going to be another six years unless—you say you can do it in three years, if I understood you right.

Mr. WATKINS. Yes, sir. You are trying to say to us, get——

Mr. YATES. I am trying to find out where these people are. You have post office addresses. You want to get the cooperation of the Navajo and Mr. Swimmer and BIA and your operation to bring them all together and say, "Look, the Congress wants to help you," and we do, I want to try to take care of the 1,200 as much as the Senate wants to take care of the 240 who are on the HPL. They are going to get pretty good accommodations if Mr. Swimmer has his way, and I hope he has his way.

But what happens to the 1,200? Let me get a hold of Eric Eberhard and people from the Navajo Nation sitting in the back. Is Eric still here? You want to bring your body guards with you up to the table? Let's discuss it.

Mr. WATKINS. We might be able to break a few staff loose, because I think we are almost through getting investigated. We have been investigated by every arm of the Federal Government and I think they are all leaving.

Mr. YATES. You have heard the story. Do you want to consult before I ask you the question? Do you want to caucus?

Mr. EBERHARD. Ask us the question.

Mr. YATES. You heard my statement. Does it make sense for the Navajo to sponsor, in cooperation with the organization, a meeting of your so-called 1,200 families and say—I know it isn't your responsibility, it is the Government's responsibility. What we are really asking you to do is help us out of the situation here, to sponsor some kind of a meeting to find out where they want to go or to find out what the tribe thinks they ought to do. Of course, you have independent people. You listen to them, I assume. What is the best way to handle this? If you had your choice, if the Navajo had their choice of what to do with people who are dispossessed here, the 1,200 families, what would you do?

Mr. **Eberhard**. You are raising a policy question.

Mr. **Yates**. This is true. You sound like the administration.

Mr. **Eberhard**. Let me take a stab at it.

Mr. **Yates**. You are talking without having consulted the tribal elders and chiefs and lords of the levy.

Mr. **Eberhard**. Yes. I don't think a mass meeting of the 1,200 families would be effective, partly for the reason I think you would end up with many more than 1,200 families——

Mr. **Yates**. Say that again.

Mr. **Eberhard**. I don't think a mass meeting would be very effective.

Mr. **Yates**. What would be effective?

Mr. **Eberhard**. I think, in part, the work that Mr. Swimmer is trying to do with respect to a family-by-family survey, very carefully designed survey instrument.

Mr. **Yates**. He is only doing that for the 240 families.

Mr. **Eberhard**. I understand that.

Mr. **Yates**. You think the survey ought to be expanded to include the 1,200?

Mr. **Eberhard**. As I understand it, the Attorney General has recommended to Mr. Swimmer and his staff and Commission staff——

Mr. **Yates**. The Attorney General or Mr. Swimmer?

Mr. **Eberhard**. The Attorney General of the Nation. Over the last several months, we have tried very hard to make plans. We think the survey should include all 1,600 relocatee families regardless of where they currently are living.

Mr. **Yates**. How long will it take? Apparently they think you are doing a good job.

RESOURCES FOR EXPANDED SURVEY

Mr. **Swimmer**. I am not sure about that. I think it would take a long time to get that done.

Mr. **Yates**. I got the impression you think he has the right kind of approach.

Mr. **Eberhard**. We think the survey is the right starting point with these folks. We wish it had been done long ago. We think it is a good point. Many of these families are in situations where they have clear notions of what they want. Some of them, of course, would prefer to never move, to stay on the Hopi land or to return to the Hopi land. Some others, as I believe——

Mr. **Yates**. What is their second choice?

Mr. **Eberhard**. As I believe Chairman Zah has testified before this committee, there are some families who would desire to move in the appropriate circumstances that live——

Mr. **Yates**. The 1,200 are in that category. They are already moved.

Mr. **Eberhard**. Certainly some of them, if not all of them.

Mr. **Yates**. We are not talking about the HPL families, they will move when they are ready. We are talking about doing something for the 1,200. You think the first thing to do is to expand the survey.

Mr. **Eberhard**. Exactly.

Mr. **Yates**. That is going to take a long time, Eric.

What is the timeframe, Mr. Swimmer, on something like that?

Mr. **Watkins**. They have told us about 120 days, I think you said, didn't you?

Mr. **Swimmer**. What we are doing is an extensive effort with up to 18 counselor-social worker people doing these surveys.

Mr. **Yates**. Where do you get them from, on your staff?

Mr. **Swimmer**. They are from the Navajo, the area office, and outside that will be hired for the job.

Mr. **Yates**. And Commission staff?

Mr. **Swimmer**. And Commission staff. And we are anticipating 90 to 120 days to work with the 240 some families on the HPL. In addition to that, as we gather the information, we know it is going to lead us into some of these 1,200 families. And if we can make some assumptions that there are probably three families that become heads of households from those 240 some families on the HPL, if that is true, we are looking at possibly up to three extended families, which means it could lead us into as many as 600 or 700 other families.

I think if we were to use the same level of staffing we proposed in the reprogramming and to do the kinds of pre-counseling that needs to be done, we are looking at anywhere from six to nine months to be able to make the contact with the 1,200 and the HPL people.

Mr. **Yates**. Isn't that essential?

Mr. **Swimmer**. Eventually it has to be done.

Mr. **Yates**. Do you need any extra money for it?

Mr. **Swimmer**. That is up to the committee and the Commission and whether they reprogram it.

Mr. **Yates**. Let me put that another way. Do you have enough money to do that?

Mr. **Swimmer**. I don't have any authority in our budget. I have $22 million, and I can use that money to build 400 houses, but I can't use it for any counseling.

Mr. **Yates**. How much money do you need for your counseling?

Mr. **Swimmer**. It would be the reprogramming request times probably three or four.

Mr. **Yates**. Times four? This is $468,000. You would need approximately, just under, what, $1.6 million?

Mr. **Swimmer**. Something like that. But some of that money is already available. The Commission is charged with doing that work.

COMMISSION FUNDS AVAILABLE FOR SURVEY

Mr. **Yates**. How much of that money is available, Mr. Watkins?

Mr. **Watkins**. We have money enough for counseling for 210. We would come in for reprogramming for their funds—

Mr. **Yates**. How much would be left for that in your annual budget?

Mr. **Watkins**. $.5 million.

Mr. **Yates**. So we need what, another $1 million for this job, right?

Mr. **Watkins**. Mike.

Mr. **Yates**. Come on, Mike.

Mr. McAlister. The 1987 budget was submitted at a time when the committee was considering $65 million for BIA. We came in with a budget based on business-as-usual, not knowing how much the process would be accelerated. This year, we are having to reprogram the $.5 million to support the survey effort out of housing moneys. In 1987, we are then at the business-as-usual level with enough operation money to utilize our $15 million in housing funds. So there is no additional money in there. We have our staff for our normal level of operation, so there is no additional funding.

Mr. Yates. As I see what is happening here is that your normal level of operation—if I go along with this idea—your normal level of operation will be together with Mr. Swimmer, so it is a combination. So whatever money you have on hand will then be used for the $1.6 million. How much do you have on hand for the purpose, is what I am trying to find out.

Mr. McAlister. We have none on hand for this new item that has just been introduced. None.

Mr. Yates. Let me ask you a question. If indeed the survey has to be done first, do you have to reprogram your activities and, therefore, your money in order to do it from some other activity?

NEED FOR REPROGRAMMING

Mr. McAlister. The 1,200 you are talking about?

Mr. Yates. Yes, the HPL and the other.

What are you shaking your head about?

Mr. Swimmer. The opinion we have had from our Solicitor, and Mr. Craft has also mentioned this, is that the housing budget for the Commission is all-inclusive, and their plan is to provide this intensive counseling pre- and post-move throughout the process. So that is more or less a priority issue within their budget. Even though they have a category of $15 million for housing, it includes everything that leads up to that. So conceivably, and according to what our Solicitor has advised us, although not formal counsel, but Mr. Craft and I have talked about it, there is a belief that the Commission can spend that money for this counseling right now out of its existing budget.

Mr. Yates. Out of the $15 million?

Mr. Watkins. May we ask Mr. Craft to speak?

Mr. Craft. Mr. Chairman.

Mr. Yates. All right, Mr. Craft.

Mr. Craft. If I could, I think you hit on exactly what the unintentional results are of what occurred in your fiscal year 1986 appropriation process that concluded in December of last year. In essence, what we had was a fiscal year 1986 budget that was submitted to the Congress as business-as-usual. BIA did not submit anything that had to do with the Relocation Commission. In conference, the Congress of the United States added the BIA as a player and restricted the $22 million that it put in the fiscal year 1986 budget. It restricted the use of the BIA funds strictly for building and constructing houses.

Counsel for the BIA has construed that they do not have any funds that can be used for any staff purposes other than the construction of the houses. That is why BIA——

Mr. **Yates**. You don't have money to be used for pre-counseling?

Mr. **Craft**. That is right. That is why BIA asked the Relocation Commission, and remember the Relocation Commission submitted its budget to you as a business-as-usual to build 210 homes. So if you will, Mr. Chairman, what we have got frankly, and the Relocation Commission, is four categories of funds. One has to do with discretionary funds, the other with regard to bonuses that are tied to the number of families that would move each year, construction funds and operation of the Commission.

What happens, in essence, if you look at both the money added for BIA and for the Commission and you put all that money into one pot, what you have ended up with is a budget that did not change with regard to the discretionary funds, it did not change with regard to the Commission operations, it didn't change with regard to bonuses. The only thing that really changed was instead of $15 million for housing, you ended up adding $22 million more for housing, and the net result was we have plenty of money in the housing category, but the business-as-usual for purposes of counseling and other kinds of staff activities that are necessary to get those houses built were not increased proportionate to the amount you increased for housing.

Mr. **Yates**. Yes, but aren't you supposed to do that in your own budget for the 1,200 families? Aren't you supposed to be doing premove counseling?

Mr. **Craft**. But remember, Mr. Chairman, what the Congress approved in the fiscal year 1986 budget was only enough counseling monies for 210 families to move. They did not approve counseling monies for us to help Mr. Swimmer use all of his construction, $22 million worth of money, and that is the problem you are facing today. That is why there is great confusion.

Mr. **Watkins**. That is why we are in for the reprogramming, to try to assist and get them off the ground.

1987 OPERATIONAL FUNDS

Mr. **Craft**. So, Mr. Chairman, if I could offer a suggestion, and what obviously needs to be done is to come back to you, Mr. Chairman, and to the Senate and let us, in our supplemental, come back and make adjustments in our categories of funding.

Mr. **Yates**. You are not going to be able to get it through OMB, are you?

Mr. **Craft**. I have every expectation to believe OMB is cooperative with the Bureau of Indian Affairs and the Relocation Commission.

Mr. **Yates**. The question is one of time. We have a supplemental bill that is pending now. Another won't come along for another three or four months. The question is how do we launch this 1,400-family plus survey? This is something that should have been done before, actually, that hasn't been done before. There is plenty of fault to go around. Maybe we didn't provide the money, we thought the Commission had enough money with which to do it as part of the so-called building program, that that includes pre- and post-counseling. Pehaps, we were in error in that. If we were in error, we ought to correct it at the present time.

The question is how do we get Mr. Swimmer's study to include the 1,200 families, assuming the 1,200 families are going to be ready to move? You are only going to have pre-move counseling for 240 families, 240 plus 200, because they move 210 a year.

Mr. CRAFT. Without reprogramming——

Mr. YATES. Because if the survey includes everybody, by the time you move the last group, that survey is not going to be pertinent because you are going to have deaths, and you are going to have illness, and you are going to have additional relatives.

The question is: How many homes can we build in order to make the survey a valid one?

Mr. WATKINS. You are making every attempt to get this done, and what we have—how about the BIA? Haven't they got money over there?

Mr. YATES. You should see the BIA budget.

Mr. WATKINS. I thought I would ask.

Mr. YATES. Mr. Swimmer, do you want to tell them?

Mr. SWIMMER. The answer is no.

Mr. YATES. You have enough money in your 1986 budget to do it?

Mr. SWIMMER. No, we don't. We are looking at a total of $37 million appropriated for the two organizations.

BIA HOUSING COST ESTIMATE

My position is, and we are in a little bit of disagreement here, an average home cost should be around $50,000. Now there are some other bonuses and payments and things that would have to be made if we were to build that many houses, but that conceivably——

Mr. YATES. Does that include infrastructure in that cost?

Mr. SWIMMER. No. The average cost has been in excess of what, $70,000?

Mr. WATKINS. Seventy thousand dollars.

Mr. YATES. Why so much?

Mr. WATKINS. Mike?

Mr. YATES. For a house like that in the picture, $70,000?

Mr. MCALISTER. Depends where it is built, Mr. Chairman. The Commission was directed to establish two benefit levels, levels for families of three or fewer, or four or more. There is a formula, including the cost modifier, local history, et cetera.

Mr. YATES. Give me a breakdown on some of those costs for the committee, would you? I never would have believed it. That is almost like a home in one of the small suburbs of a big city. And you look at the range land these homes are on, that sounds incredible to me.

[The information follows:]

The specific breakdown of the Rare Metals area relocation costs is as follows:

Thomas Yazzie:	
Housing	$55,000
Bonus	5,000
Moving	500

BEST COPY AVAILABLE

Incidental (average)	1,500
Subtotal	62,000
Betty Nez Dodd:	
Housing	55,000
Bonus	5,000
Moving	500
Incidental	1,500
Subtotal	62,000
Total	124,000

Our submitted answer assumed an average relocation cost of approximately $70,000. Examination of the client files for the two families shows the following costs at this time.

Mr. SWIMMER. What we are estimating is——

Mr. YATES. Are you as amazed by this cost as I am?

Mr. SWIMMER. No. Compared to the mutual help program of HUD, the development cost would run anywhere from $50,000 to $60,000 per unit in most reservation areas, and that is for a three-bedroom/no-frill house. We believe we can come in for less money than what has been spent and build an adequate house and one that is satisfactory to the people. We are estimating $12.5 million to develop the new land in a way that would allow us to locate people there with necessary infrastructure. Now that is substantially less than what the Commission has talked about.

We also, with the $22 million, we could either do that infrastructure up and build houses, or we can use all the $22 million to build houses, which would build some 450 houses.

The Commission is charged with the infrastructure construction on the new lands, so, again, we have to work within their budget. It requires we go into their budget in order to do those things. If we contracted to them to do the things charged by the Commission to do, we have to use their budget to do it because our funds are restricted, and we have been advised that we cannot expect a reprogramming of our $22 million. So we are asking for the budget of the Commission to finance the counseling that needs to go on and some of that infrastructure development.

Mr. YATES. All right. Let's come back at 1:30 and talk about those figures.

Mr. WATKINS. May I ask, do you anticipate what time we might finish up? There are several of us on an early flight.

Mr. YATES. What time is the flight?

Mr. WATKINS. 2:40.

Mr. YATES. I would suggest you schedule a later flight.

AFTERNOON SESSION

BIA PLANS

Mr. YATES. Mr. Swimmer, you were talking about what we ought to be doing. What do you need from this committee in order to do what you think we ought to be doing? Apparently you think you have enough money to do it.

Mr. SWIMMER. I think there was enough money to do it, but I am not sure it is in the right categories. What I talked about was, first of all, the reprogramming request that is on the table now for fiscal year 1986. That would give us the money to start and complete most of the pre-move counseling work with the physical residents of HPL. If we were to take on the additional task of counseling, first doing an identification-type counseling and then a premove counseling, with the 1,200 people out there, we talked of a budget of possibly $1.6 million. That would further impact the Commission's funds.

But I think, from what I have been told by our legislative people, it would take some kind of authorizing language in the supplemental to allow us access to that or reprogramming.

Mr. YATES. Suppose we were to think of transferring the money out of construction into this? What do you lose? Are your construction funds already allocated?

Mr. SWIMMER. No. It could be done out of our budget. It is just that I think everyone is in agreement the $22 million, less Gramm-Rudman, is in fact a housing-only figure. We can't use that for counseling. We would have to include language allowing us to reprogram some of that money or tapping into the Commission's budget to do it. Apparently in either case, it takes reprogramming or some kind of language.

Mr. YATES. What does your housing program apply to, only the Navajo?

Mr. SWIMMER. This particular budget, yes.

Mr. YATES. I don't mean this one. I mean your regular housing construction.

Mr. SWIMMER. The regular budget, the home improvement program is a nationwide program, of course.

Mr. YATES. And affects other tribes, as well.

Mr. SWIMMER. Yes.

Mr. YATES. If you were to take $1.6 million out of that program, it would impact on two or three houses, wouldn't it?

Mr. SWIMMER. It would impact on a lot more than that. We would be talking about gutting the program.

BIA'S POSSIBLE COUNSELING ROLE

Mr. YATES. You have $22 million for building. If we were to give authority to use that for counseling, post and pre—you want it for pre-move don't you?

Mr. SWIMMER. We proposed some post-move counseling also, but basically it is pre-move for those people on the HPL.

Mr. YATES. How much money do you have in your budget for pre-move counseling?

Mr. MCALISTER. Mr. Chairman, there is no budget line item other than a staff. There are six counselors, two aids and some clerical staff in that department.

Mr. YATES. How much money do you have for advisory assistance services? Page 10 of your statement. How much money for advisory assistance?

Mr. MCALISTER. We don't break down in the budget the individual components. I can supply that for the record. The total payroll is $1.8 million. These are all personnel costs, they are not contracting.

Mr. **Yates**. All right. As you break it down, will you also tell the committee how much money is in your budget for counseling services and whether the counseling services are pre- or post-move?

Mr. **McAlister**. Yes.

[The information follows:]

Advisory Services (pre and post-move counseling) receive $242,000.00 representing 17 percent of total payroll costs. Additionally, approximately 40% of the Commission's administrative costs for facilities, vehicles, training and all other related logistical costs are provided in support of this function. It should be noted that the Commission will utilize the $250,000.00 appropriated for post-move services. Finally, approximately $50,000.00 a year of discretionary and contract fees are devoted to Advisory Services.

BIA BUDGET

Mr. **Yates**. Now we turn to the BIA aid budget for a moment, and we find on page—this is the 1986 budget. There is $713,000 for housing training. The Bureau will continue to offer the HIP management training to tribal coordinators and Bureau staff involved in the implementation of the housing program. The Bureau will also continue to provide RTCP training courses to those Indian housing authorities which will receive HUD funding to undertake counseling programs for families occupying HUD housing projects.

All right, why don't you and your budget people, and your attorney who questioned it, work it out with our staff.

Mr. **Swimmer**. Yes.

Mr. **Yates**. I take it we are launched upon a pre-move counseling program, not only for the HPLs, but also for the pre-HPLs?

Mr. **Swimmer**. If we do that, there are a couple things I think need to be clear, that if the committee is expecting us to do the counseling effort for the people who are awaiting relocation on or off HPL, that it is going to require a bit of the counseling staff resources the Commission has now, it would be under our control, it would also, I would qualify it by saying priority-wise, we would still be working with those people who are physically resident of the HPL, the 248 families, and that while we are doing identification-type counseling with the 1,200 people to find out where they are and what their situation is, we would integrate those folks with the people on the HPL for extended family purposes to determine where best they should move.

But that would be the general system that I would like to follow. But we don't need to duplicate the effort. If the counseling is going to be done by the Bureau.

Mr. **Yates**. You coordinate your efforts with the Commission.

Mr. **Swimmer**. I think we can do that. We may need to amend the MOU if there is any question about that, and it will require the language, but we can work it out with staff.

Mr. **Yates**. Do we have to keep track of you in this committee? Staff says yes.

Mr. **Watkins**. We will coordinate any way we can with BIA to make this happen.

Mr. **Yates**. When the survey is completed, will you communicate with the committee so we know you are through with it? How long will it take you to do it, do you guess?

Mr. **Swimmer**. I would expect, I would ask for at least a year to be sure we get it done. I think it can be done in less than that time. What I would like to do is keep in touch with the committee and update them as we are going through the process.

Mr. **Yates**. That should not stop the moves in the meantime, I assume.

Mr. **Swimmer**. No, it would be done contemporaneously.

Mr. **Yates**. The Commission will continue to move on homesite leases on the reservation?

Mr. **Watkins**. Yes, sir.

Mr. **Yates**. Anything you fellows from the Navajo Nation want to say?

Mr. **Eberhard**. Not at this time.

Mr. **Yates**. Other than it is about time.

Mr. **Eberhard**. It is about time.

Mr. **Yates**. I take it, then, you don't need any money. All you need is authority.

Mr. **Swimmer**. That is right.

Mr. **Yates**. We will try to do that by amendment in the supplemental bill that is coming up we hope next week, or whatever.

BIG MOUNTAIN

Let's talk about Big Mountain for a moment. How many Navajo are residing in the Big Mountain area?

Mr. **Watkins**. Mr. Chairman, that can really get into a conversation, because nobody has actually put a geographical definition on Big Mountain except the United States Senate yesterday, they tell us they have a geographical boundary of the Big Mountain area, but I don't know that the people living on Big Mountain will agree with that.

Mr. **Yates**. Presumably, you have 70——

Mr. **Watkins**. What I have been told by staff and the number I have been using for some time is that there is 60 to 70 families in the Big Mountain area——

Mr. **Yates**. Is that your figure too?

Mr. **Watkins** [continuing]. That have not applied for certification.

Mr. **Yates**. That have not applied? Do you have any figures on that?

Mr. **Swimmer**. I don't.

Mr. **Yates**. What happens to the families on Big Mountain if they say they haven't applied and are not going to apply?

Mr. **Watkins**. The rest of them are certified to move.

Mr. **Yates**. How many are the rest of them?

Mr. **Watkins**. By the way, this morning we neglected to tell you this year we moved 24 families off the HPL. Is that correct?

Mr. **Tessler**. Twenty-six.

Mr. **Yates**. Voluntarily?

Mr. **Watkins**. Yes, sir.

Mr. **Yates**. Out of how many.

Mr. **Watkins**. One-hundred-five.

Mr. **Yates**. Is that the total number of families on Big Mountain?

Mr. Tessler. No. Of the relocations we have completed this year, we have moved about 105 families. Of those, 26 were actual residents of the HPL, as opposed to the 1,200 category.

Mr. Watkins. What else did you want to know, Mr. Chairman?

Mr. Yates. Are you responsible for finding housing for the families on Big Mountain?

Mr. Swimmer. Not directly. That is still HPL land.

Mr. Yates. Is Big Mountain on HPL land?

Mr. Tessler. Yes.

Mr. Yates. So you are responsible.

Mr. Swimmer. Yes, we would be responsible as part of our housing money for getting those people eligible to move. The Commission has to certify them first.

Mr. Yates. Did you want to say something?

Mr. Tessler. I have a map, which would be one of the versions of Big Mountain consistent with the bill introduced by Senator Goldwater.

Mr. Yates. Point out Big Mountain.

Mr. Tessler. This blue area is considered the Big Mountain area. You may talk to half a dozen different people and get half a dozen different versions. This is about 52,000 acres, and it was identified by Senator Goldwater in a land exchange proposal, and I can tell you about the people who live there. If you give us another version, such as Big Mountain, which we got in the Senate yesterday similar to this, we can tell you who is from there and how many are certified and ready to move. I can't do it today, but I can submit it for the record.

[The information follows:]

Question will be submitted upon completion of the Senate questions. It was not possible to complete the information gathering in time for this submission.

Mr. Yates. You know where the so-called 70 people are located?

BIG MOUNTAIN

Mr. Tessler. No, the only ones I can tell you about are those who applied for benefits.

Mr. Yates. In your statement in the April 4, 1986 Program Update and Report where you discuss the Commission needing new lands and current and future program activities, says this on page three, "A total of 1,504 certified Navajo HPL relocatee families remain to be relocated. According to the Commission's most current analysis of demographic data, *at least* 239 of these families are currently residing on the Hopi Partitioned Lands. The Commission also estimates approximately 70 other Navajo families who have not applied for relocation benefits are currently residing on the Hopi Partitioned Lands.

Mr. Tessler. Correct.

Mr. Yates. How do you know there is 70?

Mr. Tessler. Just an estimate based on information from people we work within the area, and we have been giving the Congress the figure of 65 to 70 families for the past several years who have not applied. That is the key.

Mr. Yates. Has anybody contacted those people?

Mr. Tessler. No.

Mr. **Yates**. Why not?

Mr. **Tessler**. Because we don't know who they are. We know there are families out there, we can identify them.

Mr. **Yates**. Why don't you try to find out?

Mr. **Tessler**. We are a voluntary program at this time.

Mr. **Yates**. What do you mean by voluntary? I thought you were under direction?

INVOLUNTARY RELOCATEES

Mr. **Tessler**. But the relocation is voluntary. And those people have not yet volunteered to move.

Mr. **Yates**. Shouldn't you know who the volunteers are?

Mr. **Tessler**. We do know who the volunteers are.

Mr. **Yates**. I know, but shouldn't you also know the non-volunteers?

Mr. **Tessler**. We have been asked to stay out of the Big Mountain area.

Mr. **Yates**. Who asked you?

Mr. **Tessler**. The Big Mountain residents.

Mr. **Watkins**. We don't go out there unless invited.

Mr. **Yates**. Why is that?

Mr. **Watkins**. You don't go to their house unless you are invited out there, sir.

Mr. **Tessler**. Our public information program has been asked to stay out of that area. They don't want outsiders in the area, they don't want people who don't live there unless they are invited.

Mr. **Craft**. There is no statutory authority to impose anything on anybody.

Mr. **Yates**. Are you caught in the tracks or between the stools, as some people say, with the legislation? Part of your authority and responsibility says your report shall contain, among other matters, the following names of all members of the Navajo Tribe who reside within the area partitioned to the Hopi Tribe. The names of all members who reside within the partition of the Navajo Tribe.

Mr. **Tessler**. There are people who prepared that who refused to talk to us or have their homes appraised, and we have no authority beyond that.

Mr. **Yates**. What happens at such time as you reach the point of where everybody has moved but these families? Are you just going to let them stay there?

Mr. **Tessler**. At that point, the policy is to turn over a list of those who have not moved to the Secretary of the Interior who yields the authority. We have no authority to do any kind of enforcement.

Mr. **Watkins**. Nor do we want it.

Mr. **Yates**. What are you going to turn over to the Secretary if you don't know who they are?

Mr. **Watkins**. We are going to turn over the certified people we have, and to the best of our ability and judgment advise them what information we have available.

Mr. **Yates**. This sounds like we are going around in circles here.

Mr. **Tessler**. After everyone who voluntarily moves move, the only people will be the others.

Mr. **Yates**. Will they be allowed to stay there?

Mr. **Tessler**. I can't speak for them, the tribe or the Congress.

Mr. **Yates**. The law doesn't provide power to evict? Can the Hopi go into court?

Mr. **Craft**. Yes, sir.

Mr. **Tessler**. Yes, sir, they can.

Mr. **Yates**. Let me ask the Navajo. Is this true that you have to be invited before you can talk to those people? Is there something about the Commission you don't like?

Mr. **Boyd**. I think that there are many situations out there where people have been prevented, are not asked to come out. I think originally it started with the way they approached it to begin with. I think in those situations where you have some people residing around the Big Mountain area and some of these probably being the stronger resistors to relocation, they certainly, I don't think, have extended an invitation for the commissioners to come out to relocate essentially.

I think a lot of the people out there are very frightened when the Commission comes out or representatives of the Commission, they are out there to forcibly relocate them.

Mr. **Yates**. Are these among the people you contemplate will receive or should receive pre-move counseling?

Mr. **Boyd**. Certainly. I think that all individuals, all families that are designated as certified families should have the pre-counseling, as well as the post-counseling.

Mr. **Yates**. So, therefore, what you are saying is that these people will not receive the representatives of the Commission?

Mr. **Boyd**. I am not saying they won't receive it.

Mr. **Yates**. What are you saying?

Mr. **Boyd**. I think they would receive members of the Commission, and I think if the approach to these people were done in an orderly way and they came out to talk, I might feel—my basic feeling is, yes, they would.

Mr. **Watkins**. I have been invited on two or three occasions, but I don't go out to count noses. The hospitality has been fantastic, and it has been a very good day, but I don't go out there to count names.

Mr. **Yates**. But you have to count names.

Mr. **Watkins**. Not me, sir.

Mr. **Yates**. Somebody on the Commission has to count names.

Mr. **Watkins**. Yes, sir. But I have not been invited.

Mr. **Yates**. Should we send Ms. Massetto out, or Mr. Swimmer, do you count names?

Mr. **Swimmer**. Yes.

Mr. **Yates**. Will you take Mr. Swimmer?

Mr. **Boyd**. Certainly. He is more than invited. He has come out and talked to a number of families, as indicated earlier.

Mr. **Yates**. How are you supposed to do the pre-move counseling on these people?

Mr. **Swimmer**. There is a catch 22. We can't do a count unless they are eligible relocatees. If someone has moved to the Big Mountain the past year, they are not eligible.

Mr. **Yates**. Catch 22 is right.

Well, you had better find a way.

Mr. **WATKINS**. We are going to do that, aren't we, Mr. Secretary?

Mr. **SWIMMER**. I think it is a cooperative effort.

Mr. **YATES**. You had better find a way so we can have a list of all the people. We don't want to have you come back at a later time and say "We can only do it for the volunteers."

TRIBAL ASSISTANCE/COOPERATION

Mr. **WATKINS**. I would hope, Mr. Chairman, the Navajo Tribe would embrace this same idea with us. It would be very helpful to us if they would.

Mr. **YATES**. Mr. Eberhard and his friend there, you see how cooperative they are.

Do you have any way of knowing how many homesite leases are available on the reservation?

Mr. **BOYD**. Well, presently right now there are about 317.

Mr. **YATES**. That are available?

Mr. **BOYD**. That are available. I think there are over 700 that were approved by the tribal council.

Mr. **YATES**. What happened to the Navajo ranches, they were supposed to be turned over for this purpose.

Mr. **WATKINS**. In my statement to you, Mr. Chairman, I advised you the chairman, Chairman Zah, has written the Commission a letter advising us he is prepared to go before the council and ask for those ranches to be turned over, but that hasn't been accomplished as of yet, I understand.

Mr. **YATES**. Do you know anything about that?

Mr. **BOYD**. As far as I know, we were proposing to put that on the agenda which started yesterday. That is a two-week agenda. The council will be in session for the next two weeks, and they are proposing at that time to put the tribal ranches on the agenda to be discussed.

Mr. **YATES**. Have you plans for the use of this land, the two ranches they have on their agenda?

Mr. **WATKINS**. In our planning—who wants to talk to that?

Mr. **MCALISTER**. The ranch is part of the total of the 365,000 acres in Arizona. And that whole area is planned and described as the new lands in one unit. And they were considered in CH2M Hill's planning effort. We did not go to the extent of doing a resource assessment on those ranches simply because they were not yet in the hands of the Federal Government, and there are tribal members who have cattle on there grazing. They are part of the overall plan, yes, sir.

Mr. **YATES**. How many families will those ranches house?

Mr. **MCALISTER**. The 22 grazing units that I indicated earlier that have been identified by the Navajo Area Office plan include those ranches. They are part of the planning document that you have.

Mr. **YATES**. How many of the 22?

Mr. **TESSLER**. The carrying capacity of that land is less than the land located south of the freeway.

Mr. **YATES**. Those ranches are now being used by the Navajo for grazing. What happens if you move people onto the ranches? You stop the grazing?

Mr. **McAlister**. Those who currently have grazing leases, I suspect, will have to be cancelled.

Mr. **Yates**. You can't do both, can you?

Mr. **McAlister**. They are being held in fee now and used however they wish to use them.

Mr. **Yates**. Are you going to the council meeting?

Mr. **Boyd**. I will be there next week.

Mr. **Tessler**. If those lands are taken into trust, they must be used for the benefit of relocatees only.

Mr. **Yates**. Which means the grazers move off is what you are saying.

Mr. **Tessler**. Yes, sir.

Mr. **Yates**. Unless the new ones are grazers. What is the status of the provision of water utilities to the relocation families in the group moved to Hardrock?

Mr. **Tessler**. There is not much change in that since we were there in February. We are waiting for the authority to catch up with them.

Mr. **Watkins**. But we are pushing it as far as we can.

NEW LANDS WATER QUALIFY

Mr. **Yates**. Mr. Swimmer and Mr. Watkins, what about the rumors that the water on the new lands isn't potable?

Mr. **Watkins**. I will speak to that, sir. It is a rumor. It is all drinkable, and we have documentation and plenty of affidavits to show it is adequate for everybody.

Mr. **Yates**. Who has tested the ground water?

Mr. **Watkins**. We have several testings. Hawley, you said you brought those things with you.

Mr. **Yates**. You had better supply those reports to the committee.

Mr. **Watkins**. I thought we already supplied them.

Mr. **Yates**. No.

Mr. **Watkins**. We will supply them all, sir. I think Mr. Atkinson wanted to speak to that.

Mr. **Yates**. All right, Mr. Atkinson.

Mr. **Atkinson**. We have had the validity questioned by the Navajo Tribe, the Big Mountain legal offense/Defense committee, that the water is poor in quality and poor in quantity. Those aren't right, and I can't tell you what your other question was. Let me read you a document that was prepared by Dr. Agenbroad, who did the initial research for the Navajo Tribe before they selected those ranches.

Mr. **Yates**. What is his name? How do you spell it?

Mr. **Watkins**. Agenbroad.

Mr. **Yates**. Who is Dr. Agenbroad?

Navajo Tribe, the Big Mountain legal offense'defense committee,

Mr. **Yates**. What is he, a hydrologist?

Mr. **Atkinson**. Yes.

Do you want me to speak?

Mr. **Yates**. Sure. All the time.

Mr. **Atkinson**. It is kind of difficult.

This is the October part. Here is the September 1. You must bear in mind, Mr. Yates, that this is the same man who was on the Navajo selection for new lands. They use his hydrology data, they still selected those new lands. Sometimes it has irritated me people think so little of the Navajo Tribe and their officers, no one seems to acknowledge that, and they seem to try to destroy the true basis.

Let me read this to you, September 13, 1985. "Well data available from alluvial aquifers does not present a great radiological problem." The conclusions that he has——

Mr. **Yates**. Where were these tests made?

Mr. **Atkinson**. These tests were made out on the new lands.

Mr. **Yates**. The Paragon Ranch?

Mr. **Atkinson**. No, sir.

Mr. **Yates**. Which ranches are you talking about?

Mr. **Atkinson**. Spurlock Ranch, Roberts Ranch, Kelsey Ranch, and there is one more.

Mr. **Watkins**. Wallace.

Mr. **Atkinson**. Wallace. And he says this in his conclusions. "There is more than sufficient quantity and quality ground water from the Sonsela sandstone member of the chinle formation and Bidahochi formation and the alluvium of the Southeast Tributary that drains the ranch, entering the Rio Puerco, in the vicinity of the Navajo. This alluvial unit is not hydrologically connected to the Rio Puerco alluvium except at the point of juncture (effluent)." That is important.

Under conclusions, he says, "The real parochial problem for the Spurlock Ranch is no greater than for the Chambers Ranch, which the Navajo Nation already manages." This is questioned, people questioned that, and they keep throwing it up, much to the despair of the relocatees. He says, "The alluvial water at data point 1 is from the large wash in the Wallace and Spurlock Ranches, figure 4, and is a high quality and better than the Bidahochi water."

This man has a national and international record, and he is well thought of by all his peers. So we had that done. They are not satisfied, these people who want to make the relocatees lives miserable and put them in shadows of doubt and anxiety.

Then they go from that and say "There isn't enough water", and that is not true. The Sonsela water structure is one of the best there is in Northern Arizona. So there is plenty of quantity and quality water.

Mr. **Yates**. Can the committee have a copy of that report, please?

Mr. **Atkinson**. Yes, sir. We will send you both of them.

Mr. **Yates**. I take it, Mr. Swimmer, you don't locate people on the new lands without making sure the water is potable?

Mr. **Swimmer**. We would not.

Mr. **Yates**. Have you received a copy of this report?

Mr. **Swimmer**. I am not sure if we have or not. I am not sure what it relates to as far as the water supply. I believe they have a proposal to do additional water work, and we need to get that moving.

Mr. **Watkins**. If they don't have, we will make sure they have it.

WATER PROJECT

Mr. **Yates**. Do you have a contract with CH2M Hill?

Mr. **McAlister**. We have a task order that was put on stop. It appeared we weren't sure where the site locations were going to be. At this point in time, we have one well to be drilled on the rural community, the larger area that was in question and under much criticism. As soon as there is a commitment and we feel we can adequately justify spending $150,000 to sink a well, we certainly will proceed with that.

Mr. **Yates**. How many wells have been drilled?

Mr. **McAlister**. We have not drilled any wells.

Mr. **Atkinson**. Mr. Yates, it might also interest you, and I hope it does, around the proposed ranches are a number of anglo people, and they live and have been drinking that water for years and years, and none of them have been contaminated, they are healthy, just as healthy as anybody else is. And among those people are quite a number of Navajos. The claims there is not adequate water and the water is not quality is simply to dismay relocatees. God knows they have been treated badly enough. We are not doing that, so we have to offset it. It cost a lot of money.

Mr. **Yates**. When did the doctor complete that test?

Mr. **Atkinson**. The last test he made he completed in late October.

Mr. **Yates**. I assume he conducted tests as a basis for the study.

Mr. **Atkinson**. I will send the documents to you, and you reach your own conclusion.

Mr. **Yates**. Right. The documents speak for themselves.

When are you going to commence your pilot project, Mr. Swimmer?

Mr. **Swimmer**. We are underway with it as far as identifying staff people. We will continue it as soon as we get the reprogramming request and the CH2M Hill water study.

Mr. **Yates**. How often does your task force meet, Mr. Swimmer?

Mr. **Swimmer**. Bi-weekly and more often than that as they need to.

Mr. **Yates**. Do you have a program mapped out yet, or are you preparing one?

Mr. **Swimmer**. We are following pretty much the plans that have been developed for the new lands with some modifications based on what our survey shows of the people. But our initial work, of course, is the counseling, which will take up a great deal of the time.

Mr. **Yates**. Do you have any idea how many wells you need on the new land?

Ms. **Helmer**. That will depend on the CH2M Hill water study.

Mr. **Yates**. The CH2M Hill water study has been stopped.

Mr. **Swimmer**. That is right, sir.

Mr. **Yates**. You can't do anything until the CH2M Hill water study is made available? When are you going to make that available?

Mr. **Watkins**. We stopped that. We are waiting on Mr. Swimmer.

WATER PROJECT

Mr. **Yates**. You are waiting on Mr. Swimmer, and he is waiting for you.

Mr. **Watkins**. We are back together now. We know where we are going now.

Mr. **Yates**. You are waiting for the study, aren't you?

Mr. **McAlister**. What IHS needs is a proving out of a water source. We have a meeting scheduled, in the process of being scheduled, early next week when we get back to Flagstaff, between IHS and our own staff, BIA and hopefully some of the members of the task force, to identify the locations. There are two different issues we are talking about. Mr. Swimmer is concerned about local sources for the pilot. There was also a project on line to identify a major source for the rural community, so we have got to get back with IHS as well. They are a principal player here in terms of where they want us to sink the wells.

Mr. **Yates**. The information staff has is that IHS is waiting for the study too. It seems to me everybody is waiting for the study, and the study isn't going forward.

Mr. **McAlister**. I just indicated we are meeting next week to make sure we are all in agreement on how we should go forward.

Mr. **Yates**. You are going to be starting this process next week.

Mr. **McAlister**. Yes, sir.

Mr. **Yates**. Will you let us know what happens there?

Mr. **Swimmer**. Mr. Chairman, if I could just request from the committee and the commission, I really think that we are far enough along that we don't need to wait another week to lift the stop-work order. I think the CH2M Hill contractors have enough information they won't be punching holes in the wrong place if they have to go ahead and lift the stop-work order, and if we could get the reprogramming, we could begin our work and start relocating people from HPL.

Mr. **Yates**. Mr. Watkins?

Mr. **Watkins**. Is there any problem with IHS on this?

Mr. **Yates**. Wait a minute. He says he is waiting for the CH2M Hill study. Right?

Mr. **Swimmer**. Yes.

Mr. **McAlister**. Once again, there is no order on line. That would be a very easy thing to write. We can get it done immediately.

Mr. **Yates**. What does the study propose? Wait a minute, I am told there is a representative of IHS here. Is IHS here? Are you waiting for the study, too?

Ms. **Helmer**. It is my understanding we would like to see this stop order lifted.

Mr. **Watkins**. It is done.

Mr. **Yates**. It isn't done. Mr. McAlister isn't going to let you.

Mr. **McAlister**. That isn't true.

Mr. **Yates**. If the chairman says it is done, it is done?

Mr. **McAlister**. The original task order issued has some specifics in it that no longer apply. We can give them a letter order immediately. I can do that tomorrow.

Mr. **Yates**. All right. Anything else you want to cover? Do you have any complaints against the Commission or Mr. Swimmer we ought to put into the record here?

TRIBAL INVOLVEMENT IN THE MOU

Mr. **Boyd**. There is probably one point we would like to make, and I think that is concerning the MOU. If it is going to be amended to include the additional 1,200 families, the Navajo Nation would still request that we be a part of that Memorandum of Understanding.

Mr. **Yates**. Is there objection to that?

Mr. **Swimmer**. I would be concerned about having either tribe a part of the agreement between the two Federal agencies, three Federal agencies, at this point. What I would agree to do, and have done, is involve the Navajo Tribe totally in this planning process.

Mr. **Yates**. And the Hopis if they want to be part of it, too?

Mr. **Swimmer**. Absolutely. The task force and MOU speak to a specific group of people working on this, and we are involving them through regular consultation.

Mr. **Watkins**. It is satisfactory with us, Mr. Chairman.

Mr. **Yates**. You are going to be in touch about the Navajos constantly.

Mr. **Swimmer**. We already have been.

Mr. **Yates**. What is wrong with being part of the agreement if they communicate with you?

Mr. **Boyd**. Some decisions are being made on the new lands that directly have an impact on the normal way that the Navajo Tribe develops housing sites, provides grazing permits, the whole overall planning process. And I think decisions are being made where the tribal council and tribal government and local officials are not being consulted. I think for us—see after everything is finished——

Mr. **Yates**. Well, it seems to me that such consultations should be possible and should be followed. They ought to do it. But I don't know that that necessarily requires you to be a part of the agreement. Does it?

Mr. **Swimmer**. No. And it sets up some legal problems that could—the Congress had a reason, I believe, for organizing and setting up the commission to move the people, and they chose not to give that to the Navajo Tribe. The Navajo Tribe could very easily have handled this project, as they did other relocations on the Navajo Reservation.

But because of the sensitive nature, obviously in 1974, an issue was made of that so the commission was organized to handle the relocation. Subsequent acts of Congress have, and the appropriations folks, have asked that we get involved in doing some things, and there are certain waivers on the new land as far as development.

Now, I don't deny there might be some waivers again, some things done a little differently to accommodate people on the HPL that are moving that would not follow what the Navajo Tribe might desire to have done several years from now, such as we are proposing a three to five-acre home site for grazing permittees in order to have room for an extended family to build there. If an extended family doesn't build, it means someone else gets a three-acre homesite. They don't allow a three-acre homesite, they only allow one acre.

There are other things like that, building roads, and things, charged to be done by the Commission and the Bureau. By making the Navajo Tribe a party to the formal agreement, I would defer to the Solicitor, but I would contend there could be a serious problem, that every time we take a step, we are enjoined and the process will stop.

Mr. **Yates**. I will take the responsibility of not doing it then.

Mr. **Swimmer**. The consultation effort we have engaged in is very comprehensive.

Mr. **Yates**. Anything else?

Ralph, do you want to ask any questions?

Mr. **Regula**. No.

Mr. **Yates**. We will have written questions for the record, Mr. Watkins.

Mr. **Swimmer**. Mr. Chairman.

Mr. **Yates**. Mr. Swimmer, is there anything else you want to tell us? You have a tough job, Mr. Swimmer, and I want you to know this committee will cooperate in every way with you to try to get this job done, just as we tell the same thing to Mr. Watkins and the Commission, because we do want to get this job done in such a way that at least in the future the things that happen won't be the same as happened for the 1,200 families.

I think that is a terrible situation and most unfortunate. I think we have the basis for finally moving ahead here, assuming it all moves ahead. And if you run into any trouble at all, you or Mr. Watkins, or the Navajo, you are to call the committee and let us know and let us try to help you iron out whatever problems you have.

Mr. **Swimmer**. I appreciate that. As a last request, I would ask that the reprogramming of the 1986 money for us to start the counseling work go ahead and be done. There are two committees involved in this, and if the supplemental language is put in but perhaps not approved in the Senate for some reason, we would be stopped and couldn't go forward with doing the work.

Mr. **Yates**. We are going to try to do it in the current appropriations bill that was held up yesterday. I will offer an amendment after we get the appropriate language. We can also do a reprogramming to keep the thing going.

With that——

Mr. **Watkins**. We feel very comfortable. Thank you for your attention, sir. We appreciate it.

Mr. **Yates**. Let's hope we can get it.

[Questions and answers submitted for the record follow:]

SUBMITTED HOUSE QUESTIONS AND ANSWERS

Navajo and Hopi Indian Relocation Commission

Question 1 When do the pre-move counseling sessions begin for an individual relocatee?

> --On page 124 of the 1981 Report and Plan is the following statement: "A wide range of services are provided to relocatee families -- extensive, bilingual, social services evaluation interviews prior to the following the move..."
>
> --Is it possible to begin pre-move counseling sessions earlier to address or at least identify some of these problems?

Response Pre-move counseling sessions begin immediately after applicants are determined eligible, At this point they are assigned to a caseworker who develops a relocation caseplan for nuclear families and their larger, extended families. As far as is practicable, extended families are relocated together in order to keep this support group intact. Individuals are also counseled in Relocation Education Seminars where the relocation will be processed, New Lands, on and off-reservation sites and homesite leases are discussed.

After the seminars are complete, detailed social history is obtained and a specific, site specific case plan developed for the family.

Given available staff resources, it has not been possible to begin the pre-move counseling sessions earlier than currently scheduled.

Question 2 In a answer to a Question for the Record in FY 1986 on the provision of services to the relocatees on existing reservation sites the Commission responded, "The Commission cannot guarantee the provision of services...it must be the responsibility of the individual families is seek available service."

> --Does this not contradict the statement on page 124 of the 1981 Report and Plan which discusses the "wide range of services provided to relocatee families"?

Response No. The answer does not contradict the Report and Plan. Ultimately, each relocatee is responsible for actually going to the service provider and requesting those services available. Often, Commission counseling staff will direct clients to service providers, however, it is not possible to actually take clients to service providers and "guarantee' services. The answer was also meant to indicate that the Commission does not have authority over the agencies which provide services sufficient to "guarantee" such services.

Question 3	What assurance can you provide the Committee that the specific need of the relocatees are known and being provided for?
Response	In order to provide for and address the specific needs of each relocatee, a pre-move assessment is done with each family. Clipped to back is a social history form which is the basis for the assessment and indicates the specific areas addressed. Once an area of need is identified, for example medical needs, a specific case plan is developed for the family.
Question 4	What is the percentage of unemployment among those certified eligible for relocation, those relocated, and those on the Navajo and Hopi Reservations?
Response	The Commission does not maintain this data. However, Commission counselors reviewed a list of 267 relocated families (which had been assembled for other analytic purposes) and found that of the 267 heads-of-household and the 218 spouses, 162 of the heads-of-household were employed at the time of their relocation, 72 of the heads-of-household were not employed at the time of their relocation. The employment status of 33 head-of-household at the time of their relocation could not be determined, 99 of the spouses were employed at the time of their relocation, 88 of the spouses were not employed at the time of their relocation. The employment status of 31 spouses at the time of their relocation could not be determined. According to the most current date issued by the BIA in a December, 1984 report, a 32.7% overall unemployment rate prevailed on the Navajo Reservation among those persons seeking work and a 52.1% overall unemployment rate existed among those seeking work and discouraged workers. In individual areas of the Navajo Reservation: 49.7% of those seeking work in the Chinle Agency were unemployed and unemployment was 76.4% among those seeking work and discouraged workers; while 46.5% of those seeking work in the Tuba City Agency were unemployed and unemployment was 58.3% among those seeking work and discourage workers.

Data Entry
___ initial
___ date

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

COUNSELING BRANCH

SOCIAL HISTORY

Counseling Specialist: ______________________ Date of Interview: ______________

I. Applicant Information

Applicant Name ______________________ Case # ______________

Dates of Seminar attendance: ______________________

Does applicant have appraisal? ___ yes ___ no

Does the applicant own a home off the HPL? ___ yes ___ no

Applicant is planning to move ___ on-reservation, ___ off-reservation

Education level: ______________________ English Fluency: ______________

Currently employed? ___ yes ___ no How long: ______________

Employer/location: ______________________

Job Title: ______________________

Vocational training: ___ yes ___ no Subject or skill: ______________

______________ Does applicant have certificate? ___ yes ___ no

Interested in further education or vocational training? ___ yes ___ no

Type? ______________________

Home Maintenance experience: ___ high ___ average ___ low

Kind of maintenance training needed ______________________

____

II. Family Information

A. Family Membership (list spouse first):

Name	Relationship	Sex	DOB	Census No.	SS#	School Grade	Marital Status
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							

Are all family members included in moving plans? ____ yes ____ no If no, indicate which family members are not included and reason: ____________________

____

____

B. Information about spouse:

Education level: ____________________ English Fluency: ____________________

Currently employed? ____ yes ____ no How long: ____________________

Employer/location: ____________________

Job title: ____________________

Vocational training? ____ yes ____ no Subject or skill: ____________________

____

Certificate? ____ yes ____ no Interested in further education or training? ____ yes ____ no

Type? ____________________

C. Additional pertinent information about family not included above: ____________________

____

____

____

____

____

____

____

III. Financial resources and expenditures of household - initial interview

A. Income and Sources:

(1) Wages/salary: Applicant ________ per ________. Spouse: ____________________

Per ______. Other family members: ____________________

____

(2) General Assistance: ________ per ________.

(3) AFDC: ________ per ________.

(4) Crafts: ________ per ________.

(5) Livestock sales: ________ per ________.

(6) Other (specify): ________ per ________.

Total Cash Income: ________ per ________ as of ________.

B. Non-Cash Supplements:

(1) Food Stamps: ______________ per ______________.

(2) Commodity foods: ______________ per ______________.

(3) Other (specify): ______________ per ______________.

Current Expenses: (enter approximate amounts)

1. Car Payments: ______________________________

2. Rent: ______________________________

3. Utilities: ______________________________

4. Loans: ______________________________

5. Other (specify): ______________________________

____

IV. Move Preference

Preferred location: ______________________________

Why? ______________________________

____

A. General information about move: have these issues been discussed? (check off)

_____ 1. Rules and regulations (list topics covered): ______________________________

_____ 2. Housing benefit (minimum and maximum, 25% income requirement)

_____ 3. Appraisal and homesite acquisition

_____ 4. Moving and search expenses

_____ 5. Housing choices

B. Off-reservation move: Have these issues been discussed (check off)

_____ 1. Rural vs. urban setting

_____ 2. Zoning, deed restrictions

_____ 3. Lot size and utilities available

_____ 4. Homeowner's costs (taxes, utilities, deposits, insurance)

_____ 5. Information on medical services and costs

_____ 6. Information on public school system and costs

_____ 7. New community acceptance

_____ 8. Social services available, assistance payments, etc.

____ 9. Other, related specifically to off-reservation choices: ____________________

C. On-reservation move: have these issues been discussed? (check off)

____ 1. Homesite lease process: Has applicant applied for homesite lease? ____ yes ____ no

Status of application: ____________________

____ 2. New community acceptance

____ 3. Other (specify): ____________________

V. Family Situation as Related to Relocation

A. Marital status: Married: ____ Single: ____ Separated: ____ Divorced: ____

Documentation requested ____ Filed ____

Comments about any problems which need to be considered in developing case plan: ____________________

B. Medical: Any serious disability or illness? Describe current situation: ____________________

What accommodations are needed in the replacement home? ____________________

What services or facilities are needed at/near the relocation site? ____________________

C. Alcohol/drug abuse or other social problems? ____ yes ____ no

What referral services are needed in developing relocation case plan? ____________________

D. Family support system: Describe current situation: ____________________________

____

____

____

Analysis of support system needs as related to relocation plan: ____________________

____

____

E. Post Move Needs (quality of life): Consider home maintenance training, education/vocational training needs, employment, referral services, direct counseling services: ____________________

____

____

____

____

____

____

VI. Case Summary

1. Is applicant a group move candidate? ____ yes ____ no If yes, what group? ______________________

____

(If yes, initiate or verify referral to Group Move Section).

2. Does the applicant own a home off the HPL? ____ yes ____ no (If yes, initiate procedure for .187 (b) benefit determination).

3. Preliminary benefit determination:

______________ minimum , ______________ maximum

______________ plus appraisal ______________ no appraisal

4. Total approximate household income, as of date of initial review: $______________________

Check as applicable:

4a. __________ applicant wants to move off reservation and is a potential 25% waiver case.

4b. __________ applicant wants to move on reservation and will require low-income energy efficient housing.

5. Case Plan: Describe any factory not already mentioned which must be considered for this family: __________

____

____

____

____

____

____

____

____

Reviewed ______________________________ Date ______________
Manager, Counseling Dept.

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The September 1985 Arizona Statical Review, issued by the Valley National Bank, indicates a seasonally-adjusted unemployment of 6.7% in June of 1985 for the total Arizona civilian work force.

Question 5 Are there any data on where there are job opportunities for members of the Navajo Tribe?

Response The Employment Service Branch of Arizona Department of Economic Security makes comprehensive information on job openings available at its off and on-reservation offices.

Question 6 Where are there areas to develop jobs on the reservation and on the new lands?

--Has the Commission used this potential growth center information in planning for the new lands?

--When will jobs be developed?

--What will people in the rural community center housing design do until there are jobs developed?

--How do you help people be relocating them to areas without jobs when you are giving them relocation homes who maintenance and upkeep alone increases their monthly bills?

--What is the average increase to a relocatee in their monthly utility and maintenance bills once they have moved to a new relocation home?

--What percentage of relocatees are unable to pay these higher bills and eventually loss their homes?

--If there has been no increase in their monthly bills is that because some of these new homes do not have water and sanitation facilities?

Response The Commission intends to promote adherence to tribal concepts such as growth centers in its New Lands planning the Assistant Secretary.

Planning for the New Lands has not yet reached the point where there is a schedule of when jobs will be developed. The Commission urges that economic development funding be incorporated into both its appropriations and those for the Assistant Secretary's use on the New Lands.

The Commission respectfully suggests that the questions regarding jobs for relocatees who reside on the New Lands be referred to the Assistant Secretary.

The question regarding helping people by relocating them to areas without jobs and giving them replacement homes should be viewed in the context of the Act itself. Public Law 93-531 does not stipulate that persons be given jobs as part of their relocation benefits. Further, funding for this purpose has not yet been appropriated by Congress.

(See Committee Note)

The Commission does not have data on the average increase in a relocatee's monthly utility and maintenance bills after they have moved into their replacement homes; the percentage of relocatees who are unable to pay their utility bills; nor the possible relationship between non-payment of utility bills and the sale/loss of replacement homes.

(Committee Note: 25 USC 640d-12 states that the relocation plan should take into account adverse economic impacts and be developed to avoid or minimize such impacts.)

Question 7 The Commission was required in Public Law 99-190 to submit a report on February 15, 1986 regarding planning for the new lands. Since that time, the Commission has entered into a Memorandum of Agreement with the Assistant Secretary for Indian Affairs to develop a survey instrument for the individuals remaining to be relocated so that the new lands can be developed to meet their needs.

--Discuss how this Memorandum of Agreement changes the plans outlined in the February 15, 1986 document?

--How has this Memorandum of Agreement been amended?

Response The Memorandum of Agreement as it currently exists addresses only the purposed survey of full-time residents on the HPL. Testimony before the House Committee on Appropriations indicated that there was a possibility that the Secretary's role in the survey might be expanded to include individuals who are not currently continuously domiciled on the HPL. Additionally, a whole host of new lands development factors have yet to be finally decided. In essence the only impact on the February 15, 1986 that the Commissioners currently positive of regards our approach to surveying the HPL residents and expanding the information to extended families during our counseling process. The proposed survey will accomplish this information gathering and therefore the Commission's counseling activities will begin at that point rather at the preliminary survey point. During the next two months the Commission will be preparing a revised fiscal 1987 budget to address additional staffing needs for moving

400 to 500 families a year, in response to Chairman Yates request, and it will be clearer at that point in time if there any additional impacts on the February 15, 1986 report as a result of the involvement of the Bureau of Indian Affairs.

As of this writing the Memorandum of Understanding between Relocation Commission and the Bureau of Indian Affairs has not been amended. There is a draft amendment, which should be executed shortly, which will make the Indian Health Services signatory to the Memorandum of Understanding.

Question 8 Section 13 (c) (1) of Public Law 93-531 states that the relocation plan should "be developed to the maximum extend feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal council"

--How has the Commission upheld this portion of the law in the present planning for the new lands?

--Has CH2M Hill been directed by the Commission to consult with the relocatees on this latest housing plan?

--How does the Commission assure Congress that the relocatees desires and needs are planned for and that they are not just fit into some preconceived design?

Response In the report submitted to congress on February 15, 1986, the Commission provided a detailed account of the steps that had been taken to insure that the plans for the development and settlement of the New Lands were done, "to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal council". Tribal and relocation input began as soon as the new lands were selected by the Tribe in 1983. The section of the February 15 report pertaining to relocatee the Tribal input is as follows:

Public Information Outreach

In 1983 the Commission contracted for public information dissemination by Dine' Bikeya Bahane' (translation from Navajo: Talking about the People's Land), specialized consultants who engage in a wide variety of public information services which include: Publication of bimonthly newsletters to relocatees; regular TV and radio announcements; door-to-door visits to relocatee families; presentation at chapter meetings; group meetings;

presentations to groups of relocatees at the counseling seminars and during New Lands tours.

Staff of Dine' Bikeya Bahane' (DBB) provide relocatees and the general public with information about the entire scope of Commission programs, and respond to a wide variety of questions. DBB communicates to Commission staff, in general terms, relocatee feelings and needs, completing the information loop.

Relocatee Comment Received Through Case Processing

Commission contact level personnel have provided a constant source of information about relocatee needs and concerns. As the contact staff are largely Native American, they have been sensitive to the needs of the clients. Their comments have been valuable in designing on-going program activities as well as New Lands development.

Relocatee and Tribal Participation in New Lands Planning

In addition to drawing heavily upon the knowledge acquired during eight years of program operation, New Lands Planning has incorporated relocatee and tribal comment through a series of structured activities.

1. Formulation of General Goals

During 1984 CH2M Hill planners and Commission staff held workshops, meetings and interviews with relocatees and tribal officials in order to define the broad goals to be addressed in the New Lands development plan. The principal issues identified revolved around family, grazing and jobs. The goals which were formulated, and are expressed in Planning for the New Lands are to:

a. Provide the maximum opportunity for extended families to move as units and to keep support groups intact.

b. Provide for the maximum number of relocatees to continue a traditional Navajo lifestyle.

c. Provide maximum opportunities for employment.

2. Meetings with Representative Extended Families November-December 1984

As soon as the General Plan was completed, Commission staff organized a series of twelve meetings with large extended families from each of the eleven former Joint Use Area chapters, and one meeting with District 6 evictees. The meetings were held at the families' camps on the HPL during November-December 1984. Each meeting was attended by twenty-five to thirty persons. The families were selected because the heads of household comprising the extended family unit represented a cross-section of the relocatee population in terms of socio-economic status, age, and relocation status (already relocated, pending relocation, ineligible, reluctant to move). In addition, the families were picked because each had a reputation for holding strong opinions and speaking out.

Using Navajo speakers, Commission staff showed video tapes and maps, and explained the concepts and alternatives available on the New Lands. The questions and comments obtained at the day-long meeting were recorded. The issues of principal concern are summarized in the Digest of Input Received During Meetings With Relocatee Extended Families. The meetings with these representative Navajo families resulted in the identification of a series of policy questions. The Commission then organized a survey of the relocatee population in order to obtain response to the questions.

3. New Lands Survey, March-May 1985

A survey questionnaire was developed based upon the information obtained at the extended family meetings. The purpose for conducting the survey was to collect relocatees' views on all significant issues related to development of the New Lands, so that relocatee needs and desires could be responded to by provisions of the land use regulations and planning options, to the maximum possible extent within resource constraints. The survey was also intended to determine to what extent relocatees were aware of the lands and were considering them as a relocation site option.

The forty-two item questionnaire was translated into Navajo and administered to 111 families, who represented approximately ten percent of the population of certified eligible heads of household awaiting relocation.

Survey results are summarized in Summary Report, New Lands Survey and Policy Options and Synopsis of Comments. The results of the survey were considered by Commission staff in drafting the New Lands regulations, particularly the portions dealing with grazing, and by CH2M Hill in refining plans for settlement patterns on the New Lands.

4. Land Use Regulations Meetings, August-September 1985

In order to further obtain relocatee comment which could be incorporated into regulations as they were being drafted, four meetings were scheduled at chapter houses.

Commission staff gave a detailed presentation in Navajo of proposed land development plans, including grazing opportunities and permitting priorities.

Each meeting attracted about 60-70 people whose comments were recorded and studied by staff in finalizing the proposed regulations.

The Bureau of Indian Affairs (ONPL), under an agreement with the Commission, performed range inventory and other surface resource planning on the Wallace Ranch. They are presently developing the same information on the other ranches acquired pursuant to P.L. 96-305 with an anticipated completion date of March 31, 1986.

5. Meetings With Actual Residents, October-November 1985

The Land Use Regulations meetings were followed by 15 meetings at chapter houses with relocatees actually living on the HPL. The meetings were scheduled pursuant to the Commission's desire to provide relocatees with the maximum opportunity to make informed decisions about their relocation site.

Letters were sent to approximately 350 heads of household currently living on the HPL. Information on the New Lands was presented by Navajo staff, using maps, overlays, and other audio visual materials. Relocatees who attended the meetings were invited to participate in New Lands tours.

6. Counseling Seminars, December 1985

A series of seminars for actual residents were held during December 1985. Approximately 110 relocatees attended the seminars. The Pre-Move Counseling staff presented information on the range of relocation options available, including New Lands. Persons who expressed an interest in the New Lands could sign up for the tours.

7. New Lands Tours, December, 1985-January 1986

Seven two-day bus tours of the New Lands have been conducted; about 100 families have been represented on the tours. The tours take the families to areas of the acquired ranches where cluster sites and rural communities will be located, and include an evening presentation. In addition, families are taken to the nearby town of Sanders where they meet school personnel and receive information about the education system and other community services. The opportunity to see the town also acquaints them with local services and commercial outlets.

Upon completion of the tours the families complete a questionnaire asking about their interest in moving to the New Lands. About 95 percent of the families have stated that they are willing to move to the New Lands, and have stated the factors which are important to them in making a final decision on this option. The principal factors are:

- Opportunity to continue grazing, or to resume grazing which was relinquished following cancellation of grazing permits in 1973.
- Opportunity to have extended family members move with them.
- Development of an adequate infrastructure, including the extension of services to the New Lands.
- Opportunity for employment within reasonable commuting distance, either on or off the reservation.
- Continued exercise of choice among basic house plans and housing options, and the opportunity to be employed by the contractor during construction of the relocation house.

8. Comment Received From the Navajo Tribe

Extensive effort was made to obtain comment from offices of the Navajo Tribal Government on the major issues dealt with by the comprehensive plan. The comments received by CH2M Hill are recorded in the report Policy Options and Synopsis of Comments and will not be repeated here.

In summary, specific comment was received from:

Navajo Division of Health Improvement Services: Behavioral Health Department; Navajo Aging Services; Food and Nutrition Services Department.

Navajo Division of Resources: Fish and Game Department; Forest Management Department; Grazing Committee; Office of Navajo Land Development.

Navajo Division of Water Resources: Agriculture Department.

Navajo Tribal Chairman's Office: Navajo-Hopi Development Office.

Navajo Division of Social Welfare.

Navajo Division of Chapter Development.

Division of Public Safety.

Division of Economic Development.

Navajo Division of Labor.

The major policy issues on which the Tribe has commented include: General plan alternatives; identification of the population to be settled on the New Lands; grazing; homesites and housing; community planning approaches; agriculture; cultural needs; services and facilities; water; economic development.

The second part to question eight refers to the "latest housing plan" and the involvement of CH2M Hill in the development of that plan. The Commission is not certain what is mean by this question, but a survey will be undertaken by the BIA in an effort to obtain input from relocatees on the development of the lands. CH2M Hill will have involvement in this project both in the development of a survey instrument and the analysis of the results of the survey.

In relocations to sites other than the New Lands the Commission has had little control over the relocatee's selection of a site. The Commission has taken such measures as restricting the movement of families to off-reservation sites if the family can not document an income sufficient to support off-reservation expenses. This has been done in response to the problems that arose over some families inability to meet those expenses.

Until the New Lands are ready for settlement, there are two basic options for families subject to relocation; one acre homesite ideas on-reservation or relocation to an off-reservation site.

The Commission has gone on record requesting development funds to provide community services and economic development programs for the relocatees that will be moving to the New Lands.

The Commission keeps abreast of the needs and disires by a variety of means including direct one to one contacts with clients, general surveys on the relocatee population and through secondary information compiled by individuals knowledgeable on Navajo culture. However, many of the needs and desires are beyond the scope and ability of the Relocation Commission to address. Many of the needs of the relocatee population are identical with those of the Navajo population in general. Even if Congress would provide the tremendous resources necessary to address the education, training and employment needs of the relocatee population problems might be presented by singling out a select propulation of Navajos to receive this special treatment. Economic development and education needs have been identified but no additional funding is available from existing programs. possible or practical to single out a select population of Navajo to receive this special treatment?

The area of grazing is one area that held promise on the new lands. There is an opportunity for approximately 150 families to receive grazing permits that would, although not make the family self sufficient, at lease make a significant contribution to the family income.

Question 9 Section 13 (c) (2) of Public Law 93-531 states that the relocation plan should "take into account the adverse social, economic, cultural, and other impacts of relocation..."

--How does the Commission plan to satisfy this provision in the law in respect to development of the new land?

--How is the Commission mitigating the impacts of families moving onto the reservation?

--Has the present plan been done with a focus toward socio-economic impact of moving people to these new lands or was it done on he basis of seeing how many people could be relocated to the new lands given a certain type of development?

Response For many years the Commission has recognized the importance of the extended family support system and its relationship to the individual in the Navajo family. Recognizing and keeping these extended families and communities intact to the greatest extent possible is one of the biggest challenges facing the Commission in the settlement of the New Lands.

We have worked with the Puerco Valley School System to identify the needs of the school. One of the major problems associated with the planning work that is being done is the fact that the total population of families that will be moving to the new land is not known at this time, or for that matter the number and ages of school aged children. This situation has, needless to say, made planning for the impact on human services extremely difficult. The school Superintendent has identified the need for expanded school facilities for relocatee families. His request was included in the Feburary 15th report.

The Commission has petitioned OMB on several occasions to permit them to include budget items for the development of the New Lands. These have included the request for $62,900,000 for range development, $14,500,000 for community development, $9,000,000 for economic commercial development and $4,000,000 for impact aid for existing communities. The Commission was instructed not to proceed with requesting these funds.

The Commission has funded several projects with the goal of mitigating the impacts of on-reservation moves. It must be stated, however, that the ability of the Relocation Commission to impact the extremely poor economic conditions that exist on the reservation in general are very limited. One of the primary needs of the area of the reservation surrounding the Hopi Partitioned Lands is the development of an infrastructure. This has been identified as the basic first step on which most other development is predicated.

In the area of infrastructure development the Commission has made some significant contributions that will benefit the communities in which projects have taken place in the realization of their long range development goals.

The planning for the new land evolved from relocatee input concerning their needs and desires for the new lands. The planning did not evolve as an exercise in numbers. As the Commission has repeatedly stated in reports to Congress of the total number of families who are certified, at least 400-500 do not qualify for off-reservation moves and have no homesite lease on the existing reservation. Those are the families who have expressed interest in the new lands and who have been consulted for planning. The number of families who have no place else to move has been considered in the planning effort.

The planning that the Relocation Commission did for the settlement of the New Lands has focused on providing families that were eligible for grazing permits with a meaningful number of sheep units. This was based on work that was done by the BIA Branch of Navajo Partitioned Lands. It was determined that 100 sheep units year long, while not making a permittee family self-sufficient would make a significant contribution to the family income. Based on this level of permit and the total carrying capacity of all the Arizona New Lands it was determined that approximately 150 families would receive permits.

Question 10 How many families have been relocated to date?

--How many families does the Commission anticipate moving before the July deadline?

--How many families will the funding provided in the BIA be used to relocate before the July deadline and before the end of FY 1986?

--What portion of the $22,000,000 appropriated to the BIA in FY 1986 for construction of new homes on the new lands will be utilized?

--How many families does the Commission anticipate will be relocated in the balance of FY 1986?

--How many families does the Commission anticipate will be relocation in 1987?

Response As of the end of April, 1986, the Commission has relocated a total of 988 families - 439 to on-reservation homesites and 459 to off-reservation homesite.

The Commission estimates that it will relocate approximately 38 additional families before the July deadline.

It would be appropriate for the BIA to answer the two protions of the qeustion relating to expenditure of the funds appropriated to them.
The Commission's Fiscal 1986 appropriations consisted of sufficient fund to acquire replacement homes for approximately 165-170 families. As of the end of April, 1986, a total of 114 families had acquired replacement homes. The Commission anticipates obligating the balance of its available housing funds by the end of Fiscal 1986.

The Commission's Fiscal Year 1987 budget request asked for sufficient funds to acquire replacement homes for 210 families. The Commission anticipates that these funds will be obligated during Fiscal 1987 to acquire replacement homes for relocatees.

Question 11 Discuss the agreement which has been reached within the IHS, BIA and the Commission on the roles each will play.

Response After P.L. 99-190 was passed, the Commission developed a draft three-party Memorandum of Agreement which would have included the BIA and the IHS. That memorandum was not utilitized and BIA developed a new memorandum between the Commission and Bureau, which was signed. The Commission has not been informed of any amendment to the Memorandum of Agreement between the Commission and the BIA. It is our understanding that there is a Memorandum of Agreement between the BIA and the IHS, but the

Commission was not informed or requested to participate in such an agreement.

Question 12 A freeze on development--any new construction or improvement--began as a BIA administrative action in 1966. This has become know as the Bennett Freeze area which is in area west of the 1882 reservation consisting of approximately 1.7 million acres. This freeze is referred to in the 1980 Amendments Act. In 1972 the District Court entered an order which provided that "no new construction shall be permitted on the JUA (Joint Use Area) without a permit issued jointly by the two tribes." Both of these construction freezes have added to the plight and adverse living conditions of relocatees and non-relocatees alike.

--Describe what impact the construction freeze within the Hopi Partitioned Land and in the Bennett Freeze area has had on the relocatees.

--Has the Navajo tribe expressed concern about the adverse impact of this freeze to anyone?

--If so, what has been the reaction?

--Is the Commission aware of the problems involved with the construction freeze? If so, have they expressed concern to the Court about this issue?

--If the construction freezes were lifted, would the Navajo and Hopi people have the money to make improvements?

--If not, who would be responsible for making these improvements?

--Is there any funding the BIA or with the tribes available for such improvements?

Response The construction freeze that has been in effect has definitely had an impact on the living situation of those people awaiting relocation who are physically residing on the HPL. No new construction has been allowed and there have been limitations on any repair which can be made to existing structures. As a result, those younger members of the family who marry cannot construct a home or hogan so that they could remain within their family camp setting. From the information that the Commission has, many families are living in overcrowded conditions because they cannot build additional quarters. The Commission does not have information on the Bennett Freeze area since it has no jurisdiction or responsibility for that area. We do know, however, that there are families who have moved away from the HPL and who are awaiting relocation, who are residing in the Bennett Freeze area. Some of these families are living in overcrowded conditions with other family members awaiting relocation. As a result of Congressional language, the Commission has prioritized those families who are still physically residing on the HPL over the past four years, which has exacerbated the problem for those families who moved pursuant to the Act and who are awaiting relocation and live in the Bennett Freeze Area.

The Navajo Tribe has expressed concern in testimony to Congress and in letters to various parties concerning the overcrowed conditions resulting from the construction freeze. The only correspondence of which we are aware is that which as been directed to the Commission. We cannot answer the question as to any other party with whom the Tribe may have corresponded.

The Commission has attempted to assist the Tribe when requested in securing permission for housing repairs from the Hopi Tribe. The Commission has also communicated with the Bureau of Indian Affairs concerning the situation on the HPL.

The Commission is aware of the problems involved with the construction freeze and has expressed concern to Congress, the BIA, and the Hopi Tribe about the situation. As to the question concerning the Court, the Commission is not a party to the lawsuit between the Hopi Tribe and the Navajo Tribe. This question should be more appropriately asked of the attorneys in the Department of Justice who are representing the United States in these various lawsuits. The Commission has no authority or position to express concern to the Court in the absence of involvement in a lawsuit.

The Commission does not know the financial circumstances of everybody awaiting relocation on the HPL. We assume that there is BIA H.I.P. money available to assist people in making improvements. We do not know how that money is allocated on the Navajo Reservation.

In the absence of any funds available to individual tribal members from personal sources, money may be available from the BIA or the Tribe to assist those families who are unable to afford the necessary improvements. Once again, we do not know how the BIA or Tribal funds are allocated for these purposes.

Question 13 In the FY 1986 hearing, Percy Deal of the Navajo Tribe stated that "the Navajo Tribe had submitted a number of requests for consent to engage in new construction...thus far we have either only one or two applications that have been approved by the Hopi Tribe, which causes many people to take the matter into their own hands due to the deplorable conditions that they are living in."

--How many requests is the Commission aware that the Navajo Tribe has submitted to the Hopi Tribe for construction/repair of homes on the Hopi Partitioned Land?

--How many approvals for construction have the Hopi tribe agreed to?

--What role does the Commission try to play to facilitate these approvals in light of the fact that the relocatees needs must be protected while they are awaiting relocation?

Response According to information obtained from the Hopi Tribe, 52 requests have been received for repairs, renovation or temporary construction. The Hopi Tribe has approved 28 of these requests, and disapproved 8. The remaining 16 requests were not acted upon by the Hopi Tribe, however, the renovations were completed anyway.

The Commission's role in facilitating the approval of these requests has primarily been one of referral of families to the Land Commission at the Navajo Tribe and to the Office of Partitioned Lands at the Hopi Tribe. Because of the technical nature of the District Court's definition of new construction versus repair/renovation, this matter has appropriately been left to the two tribes. The responsibility for protecting the rights of those persons awaiting relocation is specifically that of the Secretary of Interior pursuant to 25 U.S.C. 640d-9.

Question 14 In the FY 1986 hearing, Ms. Crystal stated, "we do attempt to do what we can to better the conditions of people who are awaiting relocation. However, that land is not under our jurisdiction, and we do request frequently from the Hopi tribe that permission be granted to improve people's homes out there while they are awaiting relocation."

--How frequently have you asked for Hopi assistance?

--Are you aware of the problems on the Hopi Partitioned Land?

--What steps have you taken since the FY 1986 hearing to correct these problems?

> --If you have taken no action or not notified BIA OF these problems are you not just ignoring them?

Response The Commission is aware of the problem on the HPL and is on occasion contacted by individual relocatees to request assistance. As stated in the answer to Question 13, the Commission has facilitated the requests to the Hopi Tribe and has met with the Hopi Tribal officials on a number of occasions to discuss this problem. We have also contacted the BIA about the situation on the HPL. The Commission does not ignore the problems of relocatees.

Question 15 The investigative staff discussed the mental and physical health services in and around the Joint Use Area with staff from the IHS hospital in Tuba City. The IHS staff responded that there have been an increase in mental and physical health problems which they believe, but could not prove, were associated with relocation, except in the Big Mountain area. In Big Mountain, the largest pocket of resistance, they stated that there was a threefold increase in social services and mental health care for those in age groups 30-35 and 45 and over.

> --How will the survey instrument ascertain the mental and physical health needs of those awaiting relocation?
>
> --How has the Commission sought to improve its counseling to help with these problems?
>
> --How has the Commission taken action or made recommendations to other agencies to seek to address and better understand the cause of these problems?

Response It would be appropriate for the Bureau of Indian Affairs to answer this question. At the present time the Commission does not have sufficient information about the survey instrument to respond.

The Commission does not provide the psychotherapy necessary to help with these problems. Health services for Big Mountain area residents are provided by the Indian Health Service. It is the Commission's understanding that IHS is responsible of health care in reservation communities. The Commission has funded discretionary fund projects dealing with post-move impacts but has no statutory authority for comprehensive programs.

It should be noted that no report from the investigative staff has been received by the Commission, nor were the mental health needs discussed with the Commission.

Question 16 How does post-move counseling address the problems of relocatees who are unable to cope in their new "Anglo homes" in a Anglo society?

--Describe your present post-move counseling program.

--How may staff members do you have assigned to this division?

--What are the procedures for follow-up with relocatees after they have moved?

--The Committee appropriated $250,000 in FY 1986 for counseling. How has the Commission utilized this funding?

--Discuss on page 13 of the FY 1987 justification the state that in FY 1986 your activity will be "approximately the same level of activity as 1985."

--The Committee felt this level of activity was unacceptable, why then has the Commission not increased the activity in this area?

--In Questions for the Record in FY 1986 the Commission state that the "post-move counseling process is being reviewed to determine whether the agency has the capability to provide post-move counseling services." What did this review determine?

Response In response to concerns that relocatees are unable to cope in their new "anglo homes", the Commission has developed a home maintenance training program. Under contract with the Commission, the Arizona Center for Vocational Education, had developed a homeowner maintenance program with instructional booklets and simulation boards for common repairs. This program is in the field testing stage. After field testing, the instructional materials will be reviewed and finalized. Actual implementation of the program should being in about 90 days.

The present post-move counseling program is staffed by two persons. The scope of the program encompasses contact (via letter, phone or in person) with those persons who have moved during the past two years. Contact with high risk cases is given the highest priority. Upon contact an assessment of needs is done and referrals to existing service providers is made.

Concerning the $250,000 appropriated in FY 86 for post-move counseling, the Commission has developed a uniform program for post move services, both one and off the reservation. A contract in the amount of $35,000 has already been approved for Navajo County, Arizona which serves the cities of Winslow and Holbrook. The Commission has approved final contract negotiations for a contract in Coconino County with Navajo Americans for Community Arizona (N.A.C.A.), serving the Flagstaff area and Page, Arizona.d Final Commission approval is expected in June, 1986. The Commission is also negotiating a contract for post-move services on the reservation with the Navajo Tribe. Negotiations should continue into the month of June, 1986, with final approval by the Commissioners thoughts.

All contracts for post-move services will include the following elements: Vocational/Skill assessment and training, Job Counseling and Placement, Adult Basic Education and G.E.D., Consumer Education (Daily Living Skills), Community Networking, Substance Abuse Counseling, Financial Counseling, Marital Counseling, and Mental Health Counseling. It is anticipated that actual services will in part be provided by the contractor and by referral to existing agencies.

Concerning questions for the Record in 1986 about the review of the post-move counseling process, the Commission has determined that the most efficient method to provide these services is through contracts with existing service providers such as N.A.C.A., the Community Counseling Center in Navajo County and the Navajo Tribe, rather than increasing Commission staff. The $250,000 provided by the committee for FY 86 may meet these needs. It will be necessary to continue funding in future years.

Question 17 Discuss the statement in the September 1985 Newsweek Magazine that "Counseling is a misnomer," says Sara Aleman, the recently demoted chief of counseling. "It's set up for failure."

--How have the Commission's actions remedied this problem?

Response The Commission does not know that Ms. Aleman meant. The statement was not the Commission's, but rather, was made by a former employee who was in charge of the program that she critized for approximately 5 years. It would appear to be an indictment of her own management.. This matter was addressed in a report of May 1, 1985 to the Chairman of the Subcommittee on Interior and Related Agencies in response to a report by the Surveys and Investigation Staff.

Question 18 What number of homesite leases have been granted for relocatees by the Navajo Tribe?

--What is the economic impact on a chapter of granting a homesite lease?

--What is the present unemployment rate on the Navajo reservation?

--Is there a conflict between neighbors when a new family is relocated into the chapter and given a new home with water and sanitation facilities?

--How has the tribe and/or the Commission sought to address this problem?

Response A total of 568 approved homesite leases have been received from the Navajo Tribe, 137 during this fiscal year.

The economic impact on a chapter granting a homesite lease is difficult to assess in the absence of chapter economic impact studies. In general, it seems likely to be positive since the value of the chapter's economic base is increased by the value of the replacement homes. Also, the collective spending power of the chapter residents will increase by the income, transfer payments, etc. received by the new residents.

See the answer to Question 4 for information about the unemployment rate on the Navajo Reservation.

In some instances, there have been reports of animosity between relocatees and host community members when the relocatee family moves to the host community. It is not possible to state quantitatively if such animosities are characteristic of on-reservation relocations. It is believed that such animosities are found only in a minority of relocations.

The Commission has sought to address this problem by providing funds for the construction of water and sanitation facilities which will serve host community members, as well as relocatees. In all instances, service to hose community members is a consequence of service to relocatees.

Question 19 In FY 1986 Ms. Massetto discussed relocation compounding the population density problem in host or support communities.

--Is that still the case?

--If so, what percentage of those awaiting relocation does the Commission plan for relocation to on-reservation housing?

--On what basis is this determination made?

--The Program Update and Report March 1986 states that of the 933 Navajo families who have relocated from the Hopi Partitioned Lands 405 have been relocated to on-reservation sites. What has been the economic impact of these relocations?

Response It is true that relocation is increasing the population density in host communities. Of the 1,510 families that are certified eligible for relocation and have not yet moved, 469 have obtained homesite leases or are planning to relocate on the reservation. This represents 31% of the relocatee population. Additionally the Commission is receiving an average of two new homesite lease applications each week.

The move to a homesite lease is based on the relocatee's desire and ability to obtain permission from the individual that has customary use of the area in which the proposed homesite is located to move to that site.

The economic impact of those families that have relocated to on-reservation sites is minor when you consider that the vast majority of these families are not moving from one community to another but rather move from one location to another within the same community. The economic impacts could be measured in terms of lost grazing land. If the assumption is made that for every one acre homesite lease two acres are removed from use as grazing land and there has been 405 families moving to homesite leases, the total acreage that is no longer available for livestock is 810 acres. This loss in acreage represents a loss in carrying capacity for livestock of approximately 36 to 60 sheep units year long.

Question 20 Regarding density problems, Mr. Zah's statement in FY 1986 noted, "Too often relocation homesites are being placed in on-reservation host communities already overburdened by high unemployment and greatly diminished grazing or farming lands with no attempts at providing a substitute for the economic stability which is stripped away with the forced move."

--What is the Commission doing to minimize the negative impacts of such moves?

Response The Commission has taken part in the development of infrastructure systems that are the basis for future development in many of the chapters. Again, the families that are moving to homesite leases on the reservation are not moving from one community to another but moving within a community.

It must also be noted that approval of homesite leases on the reservation is a process that is limited to the local land users, the Navajo Tribe and the BIA. The Relocation Commission has no authority to approve homesite leases. The choice of site is up to the relocatees themselves.

Questions 21 What is the status of the provision of water and utilities to the relocation families in the group move to Hardrock?

In August 1985 CH2M Hill prepared a report entitled "Hardrock Mitigation Plan." On page 3-1 of that report it stated that "two types of mitigation measures are suggested here: (1) those that offer choices to relocatees, and (2) those that improve the overall social and economic conditions in the Navajo Partitioned Land portion of the Hardrock Chapter."

--Which choice did the Commission make?

--Discuss how this report was used?

--How were the costs outlined on page 3-13 and 3-14 utilized in the preparation of the Commission's budget request?

--If this report was not used, why wasn't it?

Response The project to provide domestic water to the community of Hardrock has been divided into seven phases. The first three phases of the project will serve 33 families of which seven are relocatees. These phases of the project will have a final inspection by the Navajo Tribal Utility Authority in May to determine if they will take over operation of this part of the system.

The community water system in Hardrock, when completed, at an approximate cost of $6,000,000 will include the construction of approximately 65 miles of water main line, the construction of two 18 thousand foot deep wells, two pump houses, and four 150,000 gallon storage tanks. The funding identification, engineering design, right-of-way clearances, archaeological clearances, and the actual construction of this project in one of the most remote areas in the Continental United States is a time consuming and difficult process.

The funding necessary to complete the entire project has been identified. Phase seven, the final phase of the project, is anticipated to be complete for final inspection in May of 1988.

In response to the question on which choice the Commission made on the two types of mitigation measures that were taken in Hardrock, the answer is both. The Commission has been active in the Hardrock Chapter providing families with information on the New Lands and conducting tours of the land for families that were interested in seeing them. In addition the Commission has implemented the Hardrock Farm Project in the chapter which offers families the opportunity to increase their subsistence level crop production to the level of providing some cash income for the family.

Question 22 Discuss in detail the modifications that the Commission is making to its contract with its planning/engineering firm CH2M Hill.

--Why are these modification necessary?

--What is the cost of these modifications in FY 1986 and FY 1987?

--Does the FY 1987 budget provide sufficient funds for these modifications?

--if not, what additional funding is necessary or how can the Commission reallocate its resources to provide for these modifications?

Response The Commission is undertaking major contract modifications with the planing firm of CH2M Hill. Approximately two months ago the existing Task Orders, for Engineering and Site Planning on the New Lands, were placed under a stop work order. This was done as a result of the involvement of the Bureau of Indian Affairs and the Commission's inability to determine, at that juncture, which of our existing plans would be utilized and which would not. As a result of this inability to determine exactly how BIA would be proceeding and what impact it would on the site specific planning it was contractually inappropriate for the Commission to continue with the expenditure of funds in areas which might come to fruition. Task Order A.2, which originally called for a site concept for the rural community and water development, has been removed from the stop work order with a limited instruction to proceed through Sub-Task .04 for the purposes of completing the water analysis and survey. At that point in time Task Order .A2 will be terminated. The consulting firm is to provide to the Commission, no later than May 16, 1986, a Task Order which is to address specifically a placing of two experimental bore holes followed by expansion to development stage and based on the data derived final production wells. This is an expansion of the work originally contained in .A2 and is now more appropriately identified in a separate Task Order.

It is uncertain at this point in time what the cost of all of the engineering related site planning will be, however, they will not be constituted by modification to existing Task Orders but rather will be the issuance of new Task Orders in accordance with the Commission's plans in consultation with the Bureau of Indian Affairs. Currently, the Fiscal Year 1987 Budget does not anticipate using contracting funds for these activities but rather continuing the practice of underwriting specific site related engineering activities from housing funds, as is being done in fiscal 1986.

Question 23 In accordance with the Memorandum of Agreement between the Commission and the BIA a survey of the individual relocatees will be conducted to assure that they are consulted in the relocation process.

--What is the timeframe for this survey?

--What is the staff size necessary to conduct this survey?

--How was this survey determined?

--Who developed the questions to be used in the survey instrument?

--How were the Navajo tribe and the IHS involved in the creation of this survey instrument?

--Has CH2M Hill been instructed to consult with these organizations in developing the tools it will need to create the survey? If not, why not?

--How does the Commission and the BIA anticipate using these results in planning for the relocation of the remaining Navajo individuals?

How is the IHS participating with the Commission and the BIA in the planning and development efforts associated with relocation?

--Provide for the record a copy of the Memorandum of Agreement signed by the Commission and the BIA and the amendment which included IHS onto this document.

How are the Commission and the BIA working to ensure that the law is correctly interpreted and implemented?

Response The primary responsibility for the survey that is being conducted is with the BIA. The plan for the survey is being handled out of the Assistant Secretary's office and the Commission has not been intimately involved in the preparation of the plans for this survey. The BIA has requested the use of Commission funds to conduct this survey and a reprogramming request to Congress in the amount of $391,000 to conduct the survey has been approved. To the best of our knowledge, the questions which will be used in the survey instrument have not yet been developed. We do not know what instructions CH2M Hill has received since we have not been invited to meetings between the BIA and CH2M Hill. The information that you requested in this question could be best answered by the Assistant Secretary.

Question 24 The FY 1987 budget request does not provide for any funding for the development of the new lands in the Commission budget, the BIA budget or the IHS budget. Being that the Commission is responsible for the planning for the new lands, what amount of funding does it estimate will be necessary in FY 1987 to continue the relocation effort?

The justification states on page 2 that one of the major objective of the Commission in FY 1987 is to "maintain an effective program of federal and legislative coordinator to insure that the necessary resources from appropriate federal participants are included in the overall relocation efforts."

> --With no funding in the Commission, BIA or IHS budget for FY 1987 for new lands development, how does the Commission propose to accomplish this objective?

Response The Commission's Fiscal Year 1987 Budget was prepared with the knowledge that the Appropriations Committees were proposing add-ons to the Bureau of Indian Affairs and Indian Health Service budget for the purpose of building houses, roads and water and sanitation infrastructure. For this reason the Commission did not propose a funding source for these activities within its own budget for 1987. The actually amount of funds required for the development of the new lands will be estimated in the Commission's narrative support for the 1987 Budget Amendment which we anticipate presenting. It is highly likely however, that these funds will not be requested for the Commission but merely estimated and assigned to the respective agencies whose responsibilities the Committees of jurisdiction have determined them to be. The Commission's efforts at coordinating activities and resources of other appropriate federal participants referred to in the FY 87 Budget Justification were in regard to normal ongoing responsibilities of other agencies. Additional funding unique to the Relocation effort will be identified, as referred to above, and the Commission will attempt to insure that the appropriate agencies include these amounts in their out-years budgets estimates.

Question 25 Discuss the Commission's plans in FY 1987 to conduct a comprehensive program of Relocation Operations and Advisory Assistance Services. What resources has the Commission requested in FY 1987 to carry out this objective. Specifically detail these dollars and what it is anticipated they will accomplish.

--The Commission states that these services include necessary family counseling assistance. Discuss the counseling program in detail and the dollars associated with this program in FY 1987?

--How does this counseling program differ from those in the past which the Committee felt were inadequate?

Response The FY 87 budget essentially proposes business as usual at the Commission's maximum authority levels. In light of P.L. 99-190 which brings the Bureau of Indian Affairs into the picture, the Commission is reviewing the FY 87 budget. It will be necessary for the Commission and the BIA to make some very basic program decisions before the budget review can be completed. The Commission's counseling program resources will also be reviewed in light of these changes and Committee concerns.

Question 26 The Commission states that it will also conduct planning evaluation programs directed towards determining the feasibility of involving the private business sector in developing workable commercial alternatives for lands acquired for occupancy by relocatee families.

--Discuss what efforts were made in FY 1876 to accomplish this objective and what the results of these efforts were.

--What efforts does the Commission plan for FY 1987 in this area?

Response The Commission has not under taken any independent efforts in this area during Fiscal Year 1986 because of the role in New Lands housing given to the Secretary. During Fiscal 1986 and Fiscal 1987, the Commission will support the efforts of the Secretary by providing planning funds. There will also be a survey during Fiscal 1986, of relocatee families to determine the types of development they wish on the New Lands.

Question 27 The justification on page 4 states the goals projected for FY 1986. Discuss how the Commission has accomplished these goals to date, what resources have been necessary, and what activity is planned for the balance of the fiscal year to achieve these goals.

Response Sufficient funds are available to relocate a total of 170 families in FY 1986. A total of 114 families have relocated as of the end of April, 1986. The additional 56 homes will be acquired or the money obligated, during the balance of the fiscal year.

Regarding on-reservation group move projects, as of the end of April approximately 50 families have relocated as part of various group moves. It is anticipated that by the end of this fiscal year, the projected goal of 80 families will have participated in group moves.

Concerning New Lands planning and development, the Commission has reported elsewhere, in answer to budget questions, on the scope of various planning contracts. The involvement of the B.I.A. in the New Lands pursuant to PL 99-190, will obviously affect this activity.

Concerning the impacts of on-reservation relocation, it is anticipated that the Post Move Services Contract with the Navajo Tribe will allow further assessment of such impact.

Administrative hearings on eligibility determinations have been held on approximately 30 cases as of May, 1986. Hearings have been scheduled on 60 additional cases through September, 1986. The scheduling of the hearing caseload has been accomplished in consultation with the Navajo Tribe in consideration of their staff caseload and that of the Commission.

It is still anticipated that eligibility determinations on all pending applications will be completed by August 7, 1986, thirty day after the application deadline.

Question 28 The Commission plans to assess the impacts of on-reservation relocation and to identify mitigating measures.

--Discuss the progress made to date on this effort, what mitigating measures the Commission is proposing and how it will seek to improve future on-reservation moves.

Response All future planning will continue to examine mitigating

	measures as a facet of planning for on-reservation relocations. In addition, the Commission will continue where feasible, to cooperate with the Indian Health Service and the Navajo Tribal Utility Authority in providing water and sanitation facilities. In additions, the Commission will make every effort to fully cooperate with the Navajo Tribe when it proposes economic development projects.
Question 29	Why is the Commission requesting an increase in assistance bonus payments in FY 1987 if it is anticipated that the number of individuals relocated will be similar to the numbers relocated in FY 1985 and FY 1986 at a much lower level of appropriation?
Response	The budget justification explains that the increase in bonus payments is to underwrite the bonus cost associated with the $22,000,000 appropriated to the Bureau of Indian Affairs. The Bureau has no authority for dispensing bonus funds and therefore the Commission's FY 87 budget anticipated a sufficient bonus amount to match our $15,000,000 in housing as well as the $22,000,000 in housing money appropriated to the Secretary of Interior.
Question 30	Discuss what the Commission means by "services" in the statement: "The Commission will continue to coordinate planning efforts with these agencies so that these services will be made available to the relocatees on the new lands as well as on existing reservation sites."
Response	Services as discussed above means the services currently provided by the Bureau of Indian Affairs and the Indian Health Services to relocatees who are residing on the Hopi Partitioned Lands.
Question 31	Discuss the need for the increase for communications, utilities and rents on page 8 of the justification.
Response	The Commission's current lease arrangement for office space provides that landlord may pass through to the Commission any increase in property taxes. The original tax base for the building the Commission occupies was undevelopment warehouse space and therefore our experience last year with the increase in tax base allows us to project an increase of approximately $12,000 annual in the total rent. This is due to the fact to the Arizona State Law will not allow the escalation of property taxes, regardless of a profound change in the base, at more than a ceiling percentage prescribed by the state legislature annually. In order words the Commission anticipates approximately four years of major increases

in the Landlord's Tax Base, which the lease allows him to pass through to the Commission, until his tax base is equalized at the new status. The remainder of the Object Class 23.2 is for anticipated rate increase in utilities and telephone activities.

Question 32 How do the Commissioners alternate attendance at public meetings as described on page 9 of the justification?

--How does the alternating of attendance minimize expense?

--Discuss these cost savings in FY 1986 and that which is anticipated in FY 1987.

Response This is not an item of major budgetary impact. It was merely intended to point out that all three Commissioners did not feel compelled to be in attendance at on-reservation meetings where commission representation is requested. While some costs savings are realized because of this policy they are not sufficiently significant to address as an anticipated cost saving device in FY 87.

Question 33 On page 10 of the justification it states that "(w)ithin the limits of available resources, the Commission will increase emphasis on post-move counseling services."

--Discuss what resources will be dedicated to post-move counseling in FY 1987.

--What will be provided for those resources?

--What is the size of the counseling staff either in-house or contract staff which will be provided with these resources?

--How will the emphasis on counseling be increased over the FY 1986 program level?

Response The Commission was merely reiterating, by the statement, that it would do all within its power to address the counseling needs of our relocatees, both as mandated by our original authorization and as recently indicated as a matter of concern for the committees. In point of fact the Commission's contracting funds, during the regular budgeting process, had been reduced over the last two fiscal years. The Commission has entered into contracts with service providers utilizing the funds provided in FY 36 for the provision of post-move counseling. The annualized cost for these three agreements will be approximately be $350,000 a year. If the additional contracting funding is not continued by the committees, it may be difficult to sustain these contracts. The Commission currently has six in-house counselors with two counseling aides for a total of eight staff positions directly involved in counseling. The Commission currently is recruiting nine in-house counselors on temporary basis, as its portion of the BIA survey. The citation referred in this question would have been clearer had the Commission used the word "development" instead "acquisition".

Questions 34 Why does the FY 1987 budget provide for "technical analysis attendant to acquisition of alternative land areas for relocation purposes" as well as for assessment of the development necessary for facilities and services?

--Why is the Commission examining alternatives when the land selection and exchanges have been made in accordance with Public Law 93-531 as amended by Public Law 96-305?

--How much is allocated in FY 1987 for this task?

Response While there is a certain minimal amount of Commission activity connected with the Tribe's minor changes in the Paragon selection, (which is not yet final) this statement was in fact not intended to address that this year. There is however a great deal activity associated with the selection and development of the alternative sites on the new lands, i.e., cluster sites, and rural community sites. The Commission has approximately $100,000 allocated to this activity in Fiscal Year 1987, the vast majority of which is in personnel cost for the New Lands Manager and his staff.

Question 35 Provide for the Committee a list of all the contracts the Commission has in FY 1986, their cost and the services provided.

--In addition, provide a similar list for FY 1987.

Response Below please find a list of the Commission's contracts for Fiscal Year 1986. It can be anticipated that the majority of these contracts will be renewed in Fiscal Year 1987 as most of them have already been on line for more then one fiscal year. We do not know however, exactly which contracts will be funded and which will not during the next fiscal year.

International Conference of Building Officials	120.00
U.S.G.S. Financial Management Branch	5,000.00

Babbitt Ford	5,090.00
GSA/OAD Financie Division	5,000.00
GSA External Services Branch	27,200.00
Locksmithing	2,000.00
Treasury Department of FMS	900.00
Fred Craft	70,000.00
Sue Crystal	65,052.00
Mary Young	8,000.00
Kendall Cumming	35,000.00
Efficient & Reliable Consultants	131,558.00
Harold Merkow	45,000.00
Offical Airline Guide	31.00
Pitney Bowes	816.00
Pitney Bowes (Postage Meter Lease)	4,000.00
Pitney Bowes (Maintenance)	1,200.00
Pitney Bowes (Postage Meter Rental)	465.00
Pitney Bowes (Maintenance)	105.00
Atha Investigation	2,565.00
Mike Lowry	1,000.00
Arizona Press Clippings	504.00
Horizon Moving & Storage	2,000.00
Central Alarm	1,644.00
BIA	500.00
BIA	27,400.00
McCullough Insurance	1,352.00
Monroe Systems	726.00
General Business Tech. Inc.	120.00
Crystal Bottled Waters	2,200.00
IBM	530.00
IBM	12,736.00
Lanier Business Products	777.00
AT & T	800.00
Hydrosteam	300.00
Janitorial Services	8,736.00
ITT Servcom	15,540.00
NAU-Management Development Services	2,500.00
A T & T	1,824.00
Barrows Office Products	135.00
Hopi Tribe	140,899.00
Don Lyngholm	50,000.00
Larry Agenbroad	651.00
Training	18,304.00
	===========
CONTRACTS TOTAL	$700,280.00

Question 36 Discuss the need for the $2,000,000 requested in FY 1987 for Discretionary Funding.

--What particular projects this funding provide for in FY 1987.

Response The Commission had identified for Fiscal Year 1987, projects totaling $6,000,000 in discretionary funds. The Commission anticipated utilizing these funds to underwrite the cost of a broad range of activities designed to support land development, group moves, economic development, water development, utility extensions and other activities which would facilitate and expedite the program. Since the Commission had identified projects with a cost of approximately three times the amount of money that we are requesting the Fiscal Year 1987, it has not yet been decided which specific project will be receive funding. However, it is clear at this point that the Commission will be providing the Indian Health Service approximately $500,000 for the development of the Tuba City Sub-Division and for the completion of funding for the Hardrock, Low Mountain, Whipporwill and Bishabeto Valley water supply and electrical service. This second project was anticipated in 1986, however, the $2,000,000 during the fiscal year was approximately $240,000 below the total required for all of the anticipated 1986 projects. The Tuba City Subdivision is currently estimated at approximately $260,000. Refunding of on-going activities such as the agency's public information project, agreements with the two tribal governments, and other related projects are anticipated to continue at the historical level of approximately $500,000 per year. The balance of the discretionary funds will be utilized for site-development cost on the new lands.

Question 37 Is the Commission not aware that in FY 1986 it was the Conference Committee which agreed to the additional funding is Discretionary Funds to match IHS funding for completion of ongoing infrastructure on-reservation land other than the new lands?

--How is that funding being utilized?

--Will these additional funds be obligated in FY 1986?

Response Yes, the Commission is aware that it received additional $200,000 in discretionary funds to match IHS projects during fiscal year 1986.

Agreements totaling $3,000,000 were entered into late in fiscal year 1985, contingent upon the availability of funds during fiscal year 1986. As soon as the monies were made available to the Commission they were formally obligated to the Indian Health Services and have now been fully disbursed. IHS has these funds in their possession and is moving forward on all of the existing reservation infrastructure projects that been thus funded.

Question 38 Public Law 99-190 states "(t)hat none of the funds contained in this or any other Act may be used to evict any Navajo household, who as of November 30, 1985, is physically domiciled on the lands partitioned to the Hopi Tribe until such time as a new or replacement home is available for such household."

--Has the Commission discussed with the Solicitor their opinion on whether or not this language supersedes Section 14 (a) of Public Law 93-531 which states that relocation should be accomplished by the end of five years from the date on which the relocation plan takes effect?

--If so, what is the Solicitor's opinion?

--If not, why not with the impending deadline?

--Does the Commission anticipate evictions from any party come the deadline?

--Has the Commission discussed the problem of the deadline with the District court to assure that it won't issue any notices for eviction?

--What has been the Court's reaction?

Response

The Commission has not yet discussed the matter of the deadline with the Solicitor. Since ee cannot express the opinion of the Solicitor, this question should more appropriately be asked of the Solicitor's office. The Commission is attempting to set up a meeting with the Solicitor's office and the Department of Justice to discuss this matter. The Commission is not aware of any plans for eviction from any party. However, the Hopi Tribe does not consult the Commission on its own internal decisions so we have no idea what their plans are for action concerning the deadline. As stated in the answer to Question 12, the Commission is not a participant in any legal action relative to the deadline. In the absence of any legal action involving the Commission, the Commission has no access to the District Court. In general, courts do not solicit opinions of non-parties, particularly when there is no lawsuit pending relative to the issue at hand.

WEDNESDAY, FEBRUARY 26, 1986.

INDIAN HEALTH SERVICE

WITNESSES

EVERETT R. RHOADES, M.D., DIRECTOR, INDIAN HEALTH SERVICE

EDWARD D. MARTIN, M.D., ACTING DEPUTY ADMINISTRATOR, HEALTH RESOURCES AND SERVICES ADMINISTRATION

MILBURN H. ROACH, ACTING ASSOCIATE DIRECTOR FOR ADMINISTRATION AND MANAGEMENT, INDIAN HEALTH SERVICE

BILLY F. PEARSON, COORDINATOR, OFFICE OF ENVIRONMENTAL HEALTH AND ENGINEERING, INDIAN HEALTH SERVICE

Mr. MURTHA [presiding]. Dr. Rhoades, welcome to the committee. Since this is Dr. Martin's first appearance, we will put his biography, and also the report on sequestration under the Balanced Budget and Emergency Deficit Control Act in the record. The justification for rescissions estimates for the Committee on Appropriations, 1986, will be put in the record also.

[The information follows:]

BIOGRAPHICAL SKETCH

NAME:	Edward D. Martin, M.D.
DATE AND PLACE OF BIRTH:	March 27, 1941, Honolulu, Hawaii
EDUCATION:	University of Kansas; A.B. Degree, 1966 University of Kansas; M.D. Degree, 1970

EXPERIENCE

July 1985 - Present
Acting Deputy Administrator
Health Resources and Services Administration
Department of Health and Human Services

February 1983 - June 1985
Director, Bureau of Health Care Delivery and Assistance
Health Resources and Services Administration
Department of Health and Human Services

September 1982 - February 1983
Associate Administrator for Clinical Affairs
Health Resources and Services Administration
Department of Health and Human Services

1975 - 1982
Director, Bureau of Community Health Services
Health Services Administration
Department of Health and Human Services

1974 - 1975
Director, National Health Service Corps
Health Services Administration
Department of Health, Education and Welfare

1971 - 1973
Director of Health Services
Dr. Martin Luther King, Jr. Health Center
Brooklyn, New York

1970 - 1973
Internship and Residency, Social Pediatrics,
Montefiore Hospital and Dr. Martin Luther King, Jr. Health Center

1969 - 1970
President, Student American Medical Association

1959 - 1964
Enlisted Service, Corpsman, U.S. Navy

HONORS

Distinguished Service Medal, U.S. Public Health Service Commissioned Corps, 1982

Meritorious Service Medal, 1979

Superior Work Performance, Health Services Administration, 1975

RECENT PUBLICATIONS

"The Federal Initiative in Primary Care," Journal of Ambulatory Care Management, 3(3):33-45, August 1980, Martin, Edward D. and Bohrer, Richard C.

Proceedings, "Primary Care Systems Building," American Health Planning Association Publication 17-20. St. Charles, Illinois, July 30-31, 1979, Martin, Edward D.

Report on Sequestration Under the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings) for Committee on Appropriations 1986

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF HEALTH AND HUMAN SERVICES
FISCAL YEAR 1986 REPORT ON SEQUESTRATION

TABLE OF CONTENTS

Page No.

IHS, Indian Health Services.......................... 35
- 1. Clinical Services.......................... 35
- 2. Preventive Health.......................... 42
- 3. Urban Health.......................... 47
- 4. Indian Health Manpower.......................... 48
- 5. Tribal Management.......................... 49
- 6. Direct Operations.......................... 50
- 7. Indian Health Facilities.......................... 53

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Hospital and Health Clinics	$433,598,000	-$4,591,000	$429,007,000

Effect of Sequestration

Of the $433,598,000 provided in the FY 1986 appropriation for the Indian Health Service (IHS) Hospitals and Health Clinics activity, $4,591,000 (1.1%) will be sequestered.

The sequestration of $4,170,000 (1%) of funds provided in the FY 1986 appropriation for the provision of inpatient and outpatient services through the IHS Hospitals and Health Clinics activity will result in a reduction in program activities. Every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment; however, there may be a minimal reduction in the provision of services.

Of the $3,976,000 provided in the FY 1986 appropriation for the support of Emergency Medical Services, $40,000 (1%) will be sequestered. The sequestration will eliminate support for approximately 3 emergency medical technicians (EMTs). After sequestration, $3,936,000 would remain available in FY 1986 to support 260 EMTs staffing 65 tribal ambulance service programs which provide emergency medical care on a 24-hour basis.

Of the $2,982,000 provided in the FY 1986 appropriation for the support of indirect costs for tribal contracts, $30,000 (1%) will be sequestered. After sequestration, $2,952,000 would remain available for indirect costs to assist tribal contractors to operate and manage their own health programs under the authority of P.L. 93-638, The Indian Self-Determination and Education Assistance Act.

Of the $1,889,000 provided in the FY 1986 appropriation for the support of the Model Diabetes program, $19,000 (1%) will be sequestered. The sequestering may result in a minimal reduction in services but every effort will be made to minimize a reduction in services by reducing training and the purchase of supplies and equipment. After sequestration, $1,870,000 will remain available for support of the Model Diabetes program in FY 1986.

The sequestration of $332,000 (4.3%) of funds provided in the FY 1986 appropriation for the administrative overhead costs at the IHS hospitals and health clinics will result in a reduction of administrative support.

The following table provides a summary of the sequestration by activity/project as well as impact data:

Activity/Project	FY 1986 Appropriation	Sequestration Amount	Sequestration %	FY 1986 Available After Sequestering
Provision of Inpatient and Outpatient Services	$417,033,000	-$4,170,000	-1%	$412,863,000
Emergency Medical Services (EMTs Supported)	3,976,000 (263)	-40,000 (-3)	-1% (-1.1%)	3,936,000 (260)
Indirect Costs for P.L. 93-638 Contracts	2,982,000	-30,000	-1%	2,952,000
Model Diabetes Program	1,889,000	-19,000	-1%	1,870,000
Administrative Overhead Costs	7,718,000	-332,000	-4.3%	7,386,000
Total	$433,598,000	-$4,591,000	-1.1%	$429,007,000
Impact Data:				
Average Daily Patient Census (excluding newborns)	990	*		990
Hospital Admissions (excluding newborns)	76,200	*		76,200
Average Length of Stay (days)	4.8	*		4.8
Births	13,200	*		13,200
Outpatient Visits (all clinics)	3,342,000	*		3,342,000

*Minimal, if any, impact.

37

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Dental Services	$25,879,000	-$259,000	$25,620,000

Effect of Sequestration

Of the $25,879,000 provided in the FY 1986 appropriation for the Dental Services activity, $259,000 (1%) will be sequestered. The sequestering may result in a minimal reduction in services, but every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Persons Treated	258,000	*	258,000
Services Provided	1,904,000	*	1,904,000

*Minimal, if any, impact.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Mental Health	$11,449,000	-$115,000	$11,334,000

Effect of Sequestration

Of the $11,449,000 provided in the FY 1986 appropriation for the Mental Health activity, $115,000 (1%) will be sequestered. The sequestering may result in a minimal reduction of services, but every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Client Contacts	180,000	*	180,000

*Minimal, if any, impact.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Alcoholism	$24,627,000	-$246,000	$24,381,000

Effect of Sequestration

Of the $24,627,000 provided in the FY 1986 appropriation for the Alcoholism activity, $246,000 (1%) will be sequestered. The sequestering may result in a minimal reduction in services, but every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Activity/Project	FY 1986 Appropriation	Sequestration		FY 1986 Available After Sequestering
		Amount	% 1/	
Warm Springs Demonstration	$124,000	-$1,000	- .8%	$123,000
University of Washington Fetal Alcoholism Research	99,000	-1,000	-1.0%	98,000
All Other Alcoholism Projects	24,404,000	-244,000	-1.0%	24,160,000
Total	24,627,000	-246,000	-1.0%	24,381,000
Impact Data:				
Outpatient Visits	339,000	*		339,000
Inpatient Days	206,000	*		206,000

*Minimal, if any, impact.

1/ The actual reduction is 1%, but because of rounding the percentage reduction shown by project varies from 1%.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Maintenance and Repair	$8,621,000	-$86,000	$8,535,000

Effect of Sequestration

Of the $8,621,000 provided in the FY 1986 appropriation for maintenance and repair of the IHS hospitals and health centers, $86,000 (1%) will be sequestered.

The $86,000 sequestering will have minimal impact on this activity. For example, the sequestering may not permit some routine maintenance and repair such as painting, minor wall repairs, and/or minor electrical work to be done at several facilities.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

41

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Contract Health Care	$170,040,000	-$1,700,000	$168,340,000

Effect of Sequestration

Of the $170,040,000 provided in the FY 1986 appropriation for the Contract Health Care activity, $1,700,000 (1%) will be sequestered.

The sequestration of $1,700,000 would lead to the following reduction of services available under contract health care.

Impact Data	FY 1986 Appropriation	Sequestration		FY 1986 Available After Sequestering
		Amount	%	
Hospital - Admissions	21,745	-233	-1.1%	21,512
Days	102,200	-1,095	-1.1%	101,105
Average Daily Patient Load	280	-3	-1.1%	277
Ambulatory Outpatient Visit	242,178	-2,421	-1.0%	239,757
Dental Patients	40,568	-406	-1.0%	40,162

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Sanitation	$20,804,000	-$208,000	$20,596,000

Effect of Sequestration

Of the $20,804,000 provided in the FY 1986 appropriation for the Sanitation activity, $208,000 (1%) will be sequestered. The sequestering may result in a minimal reduction in services, but every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Environmental Health Services	259,000 1/	*	259,000

*Minimal, if any, impact.

1/ This estimate is significantly lower than previous estimates because of the introduction of a revised reporting system during FY 1985.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Public Health Nursing	$12,441,000	-$124,000	$12,317,000

Effect of Sequestration

Of the $12,441,000 provided in the FY 1986 appropriation for the Public Health Nursing activity, $124,000 (1%) will be sequestered. The sequestration may result in a minimal reduction in services, but every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Public Health Nursing Services	610,000	*	610,000
No. of Families Served	55,000	*	55,000

*Minimal, if any, impact.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

41

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Health Education	$3,614,000	-$36,000	$3,578,000

Effect of Sequestration

Of the $3,614,000 provided in the FY 1986 appropriation for the Health Education activity, $36,000 (1%) will be sequestered. The sequestration may result in a minimal reduction in services, but every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Health Education Services	223,000	*	223,000

*Minimal, if any, impact.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Community Health Representatives	$25,844,000	-$259,000	$25,585,000

Effect of Sequestration

Of the $25,844,000 provided in the FY 1986 appropriation for the Community Health Representatives activity, $259,000 (1%) will be sequestered. The sequestering may result in a minimal reduction in services, however, tribal contractors will likely make every effort to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
No. of CHRs Supported	1,500	*	1,500
Encounters (Individuals and Groups of Individuals)	8,127,000	*	8,127,000

*Minimal, if any, impact.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

46

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Hepatitis B Screening and Immunization Program (Alaska)	$2,705,000	-$27,000	$2,678,000

Effect of Sequestration

Of the $2,705,000 provided in the FY 1986 appropriation for the Alaska Hepatitis B Screening and Immunization Program, $27,000 (1%) will be sequestered. The sequestering may result in a minimal reduction in services, but every effort will be made to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Services Provided:			
No. of Patients Vaccinated	12,000	*	12,000
No. of Patients Screened	20,000	*	20,000

*Minimal, if any, impact.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Urban Health Projects	$9,741,000	-$97,000	$9,644,000

Effect of Sequestration

Of the $9,741,000 provided in the FY 1986 appropriation for the Urban Health Program, $97,000 (1%) will be sequestered. The sequestering may result in a minimal reduction of services, however, contractors will likely make every effort to minimize the reduction of services by reducing travel and training and the purchase of supplies and equipment.

Impact Data:	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
No. Contract Projects	37	*	37
No. of Persons Served	400,000	*	400,000

*Minimal, if any, impact.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Indian Health Manpower	$6,460,000	-$65,000	$6,395,000

Effect of Sequestration

Of the $6,460,000 provided in the FY 1986 appropriation for the Indian Health Manpower program, $65,000 (1%) will be sequestered.

The sequestration will reduce the number of scholarships granted and extern placements funded by 5 less scholarships and 3 less extern placements.

Impact Data:	FY 1986 Appropriation	Sequestration		FY 1986 Available After Sequestering
		Amount	% 1/	
Section 102 Health Professions Recruitment Program	$504,000	-$5,000	-1.0%	$499,000
(In-Med Program)	(279,000)	(-3,000)	(-1.1%)	(276,000)
(MPH Programs)	(225,000)	(-2,000)	(-0.9%)	(223,000)
No. of Projects	5	-0-		5
Section 103 Health Professions Preparatory Program	$1,695,000	-$17,000	-1.0%	$1,678,000
No. of Scholarships	150	-2	-1.3%	148
Section 338G (PHS Act) Health Professions Scholarships	$3,360,000	-$34,000	-1.0%	$3,326,000
No. of Scholarships	298	-3	-1.0%	295
Section 105 Extern Program	$901,000	-$9,000	-1.0%	$892,000
No. of Externs	298	-3	-1.0%	295
Total Budget Authority	$6,460,000	-$65,000	-1.0%	$6,395,000

1/ The actual reduction is 1%, but because of rounding the percentage reduction shown by activity varies from 1%.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

49

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Tribal Management	$1,988,000	-$20,000	$1,968,000

Effect of Sequestration

Of the $1,988,000 provided in the FY 1986 appropriation for the Tribal Management Activity, $20,000 (1%) will be sequestered.

The sequestration will eliminate support for one project in the area of tribal training, evaluation or development or improvement of tribal management systems.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Direct Operations	$60,383,000	-$2,596,000	$57,787,000

Effect of Sequestration

Of the $60,383,000 provided in the FY 1986 appropriation for the Indian Health Services Direct Operations activity, $2,596,000 (4.3%) will be sequestered.

The sequestration will result in a reduction of travel, supplies, training, and equipment for IHS management staff.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

51

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Reimbursements (Medicaid)	$25,748,000	-$256,000	$25,492,000

Effect of Sequestration

The Gramm-Rudman-Hollings Deficit Reduction Act also requires the sequestering of reimbursements received from non-federal sources. For the IHS, these collections represent medicaid reimbursements from the States for IHS beneficiaries served in IHS facilities and reimbursements from non-federal sources, such as the state of Alaska, for non-IHS beneficiaries served in IHS facilities. The sequestering will result in $256,000 of the estimated FY 1986 collections ($24,100,000 for Medicaid and $1,648,000 from other non-federal sources) being witheld from obligation in FY 1986.

The $256,000 (1%) sequestration may have a minimal impact on the activities supported with these funds, such as reduced consultant services, supplies, etc.

52

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Services

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Permanent Budget Authority (Operation and Maintenance of Quarters)	$3,000,000	-$30,000	$2,970,000

Effect of Sequestration

The IHS estimates that $3 million will be collected from IHS employees housed in IHS personnel quarters in FY 1986. Under the authority of Section 320 of P.L. 98-473, in FY 1985 a new account was established to deposit these collections. The collections are available, until expended, for the maintenance and operation of IHS personnel quarters.

The sequestering will result in $30,000 of the estimated FY 1986 collections being witheld from obligation in FY 1986.

The $30,000 (1%) sequestration may have a minimal impact on the activities surported with these funds. For example, the sequestering may not permit some routine maintenance and repairs, such as painting.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Facilities

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Hospitals			
New and Replacement	$12,386,000	-$124,000	$12,262,000
Modernization and Repair	$ 3,081,000	-$ 31,000	$ 3,050,000

Effect of Sequestration

The proposed sequestration of $124,000 (1%) in FY 1986 should have minimal, if any, impact on phase I construction of the Rosebud project.

The reduction of $31,000 (1%) in FY 1986 for modernization and repair should have minimal, if any, impact on the modernization and repair projects.

The following is a listing of the effect of sequestration on the projects funded in FY 1986:

Project	FY 1986 Appropriation	Sequestration Amount	Sequestration % 1/	FY 1986 Available After Sequestering
Hospitals:				
New and Replacement:				
Rosebud, SD Replacement Hospital-Phase I constr. and long-lead equipment	$10,408,000	-$104,000	-0.99%	$10,304,000
Kotzebue, AK Replacement Hospital-Planning and design	1,978,000	-20,000	-1.01%	1,958,000
Total	12,386,000	-124,000	-1.0%	12,262,000
Modernization and Repair:				
Ft. Defiance, AZ Hospital	1,292,000	-14,000	-1.08%	1,278,000
Belcourt, ND Hospital	696,000	-7,000	-1.0%	689,000
Bethel, AK Hospital-Personnel Quarters	497,000	-5,000	-1.0%	492,000
Colville, WA Health Center	176,000	-1,000	-0.57%	175,000
Albuquerque Area Hospitals: (Zuni, Acoma-Canoncito-Laguna, Albuquerque, and Santa Fe, NM)	420,000	-4,000	-0.95%	416,000
Total	3,081,000	-31,000	-1.0%	3,050,000

1/ The actual reduction is 1%, but because of rounding the percentage reduction shown by project varies from 1%.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Facilities

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Outpatient Care Facilities	$722,000	-$7,000	$715,000

Effect of Sequestration

The proposed sequestration of $7,000 (1%) in FY 1986 should have minimal, if any, impact on the planning and design of the following facilities:

Project	FY 1986 Appropriation	Sequestration Amount	Sequestration % 1/	FY 1986 Available After Sequestering
Wagner, SD	$100,000	-$1,000	-1.0%	$ 99,000
Toppenish, WA	622,000	- 6,000	-0.96%	616,000
Total	722,000	- 7,000	-0.97%	715,000

1/ The actual reduction is 1%, but because of rounding the percentage reduction shown by project varies from 1%.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Facilities

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Sanitation Facilities	$24,850,000 1/	-$249,000	$24,601,000

Effect of Sequestration

The sequestered amount of $249,000 (1%) will preclude the provision of sanitation facilities to approximately 30 new Indian homes, or approximately 1% of the estimated 2,880 homes for which funds were appropriated in FY 1986.

Impact Data	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
No. of New and Improved Homes	2,880 1/	-30 (-1.0%)	2,850

1/ Includes $4,970,000 for the construction of sanitation facilities to approximately 300 new homes in support of the Navajo and Hopi Indian Relocation Act.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION
Indian Health Facilities

Effect of Sequestration

Program/ Activity	FY 1986 Appropriation	Sequestration	FY 1986 Available After Sequestering
Personnel Quarters	$5,626,000	-$56,000	$5,570,000

Effect of Sequestration

The proposed sequestration of $56,000 (1%) in FY 1986 should have minimal, if any, impact on the construction and equipping of the required units of staff quarters for the following facilities:

Project	FY 1986 Appropriation	Sequestration		FY 1986 Available After Sequestering
		Amount	% 1/	
Sacaton, AZ-Renovate 8 units of personnel quarters	$ 159,000	-$ 1,000	-0.63%	$ 158,000
Ft. Thompson, SD-Constr. 13 units of personnel quarters	1,292,000	-13,000	-1.0%	1,279,000
Kanakanak, AK-Constr. 26 units of personnel quarters	4,175,000	-42,000	-1.0%	4,133,000
Total	5,626,000	-56,000	-1.0%	5,570,000

1/ The actual reduction is 1%, but because of rounding the percentage reduction shown by project varies from 1%.

Justification of Rescission Estimates for Committee on Appropriations 1986

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Indian Health Services

Fiscal Year 1986 Rescission Budget — Page No.

Appropriation Language 79

Amounts Available for Obligation 80

Summary of Changes 81

Budget Authority by Activity 83

Budget Authority by Object 84

Justification:

Narrative:

A. Clinical Services

1. Hospitals and Health Clinics 86

2. Contract Care 88

B. Preventive Health

Community Health Representatives 89

C. Urban Health Programs 90

D. Tribal Management 91

INDIAN HEALTH SERVICES

Of the funds made available under this head in Public Law 99-190, $24,262,000 are rescinded.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Indian Health Services

Amounts Available for Obligation 1/

1986 Appropriation	$818,194,000
1986 Sequester order	-10,429,000
Proposed rescission	-24,262,000
Subtotal, adjusted appropriation	$783,503,000
Total Obligations	$783,503,000 2/

1/ Excludes reimbursements of $65,254,380 estimated to be available and obligated by the Indian Health Service.

2/ Does not reflect $63,000 Consultant Services funds withheld from obligation as required by Section 515 of the Treasury-Postal Service Appropriation Act (P.L. 99-190).

Summary of Changes

1986 Budget Estimate	$818,194,000
1986 Sequester Order	-10,429,000
1986 Estimate After Sequestering	807,765,000
1986 Revised Budget Estimate	783,503,000
Net Change	-$24,262,000

	1986 Base	Change from Base
Decreases:		
Program:		
Clinical Services		
1. Hospitals and Health Clinics: Rescinds funds for travel and transportation of things, rents, communications, and utilities, printing, contractual services, supplies, equipment, and grants	---	-$2,101,000
Rescinds part of the funds for emergency medical response and transport services within the Indian Health Program and permits operation through March 31, 1986 and orderly phase down beginning in April 1986	3,936,000	-1,738,000
Rescinds funds for overhead costs to assist tribes to contract to operate and manage their health programs under P.L. 93-638, The Indian Self-Determination and Education Assistance Act	2,952,000	-2,952,000
Total, Hospitals and Health Clinics	$429,007,000	-$6,791,000
2. Contract Care: Rescinds funds for contract health services	$168,340,000	-$2,474,000

	1986 Base	Change from Base
3. Preventive Health Community Health Representative Rescinds part of the funds for the Community Health Representatives Program.........	$25,585,000	-$11,085,000
4. Urban Health Program Rescinds part of the funds for the Urban Health Programs........................	$9,644,000	-$2,444,000
5. Tribal Management Rescinds part of the funds for Tribal Management...............	$1,968,000	-$1,468,000
Total Decrease 1/..........	$807,765,000	-$24,262,000

1/ Excludes reimbursable activities.

Budget Authority by Activity

	FY 1986 Appropriation	FY 1986 after Sequestering	FY 1986 Revised Estimate	FY 1986 Proposed Rescission
Clinical Services:				
Hospitals and Health Clinics..............	433,598,000	$429,007,000	$422,216,000	-$6,791,000
Contract Care.........	$170,040,000	$168,340,000	$165,866,000	-$2,474,000
Preventive Health:				
Community Health Representatives...........	$25,844,000	$25,585,000	$14,500,000	-$11,085,000
Urban Health Program...............	$9,741,000	$9,644,000	$7,200,000	-$2,444,000
Tribal Management.....	$1,988,000	$1,968,000	$500,000	-$1,468,000
All Other.............	$176,983,000	$173,221,000	$173,221,000	---
Total 1/..............	$818,194,000	$807,765,000	$783,503,000	-$24,262,000

1/ Excludes reimbursable activities.

Budget Authority by Object

	FY 1986 Appropriation	FY 1986 After Sequestering	FY 1986 Revised Estimate	FY 1986 Proposed Rescission
Personnel compensation:				
Full-time permanent	$242,102,000	$240,824,000	$240,824,000	---
Other than full-time permanent.....	9,568,000	9,568,000	9,568,000	---
Other personnel compensation.......	14,751,000	14,751,000	14,751,000	---
Total, personnel compensation...	$266,421,000	$265,143,000	$265,143,000	---
Personnel benefits....................	59,891,000	59,665,000	59,665,000	---
Travel and transportation of persons.	21,938,000	21,363,000	21,329,000	- 34,000
Transportation of things.............	6,467,000	6,247,000	6,098,000	- 149,000
Rent, communications, and utilities:				
Standard level user charge.........	4,720,000	4,720,000	4,720,000	---
Rental payments to others..........	5,012,000	5,012,000	5,012,000	---
Communications, utilities, and miscellaneous charges............	20,635,000	20,523,000	20,377,000	- 146,000
Printing and reproduction............	1,238,000	1,197,000	1,174,000	- 23,000
Other services........................	356,339,000	349,677,000	328,329,000	- 21,348,000
Supplies and materials...............	56,715,000	55,811,000	54,952,000	- 859,000

	FY 1986 Appropriation	FY 1986 After Sequestering	FY 1986 Revised Estimate	FY 1986 Proposed Rescission
Equipment............................	5,785,000	5,517,000	5,375,000	- 142,000
Land and structures..................	145,000	145,000	145,000	---
Grants, subsidies, and contributions.	12,888,000	12,745,000	11,184,000	- 1,561,000
Total, By object..................	$818,194,000	$807,765,000	$783,503,000 1/ 2/	-$24,262,000

1/ Excludes reimbursements of $65,254,380 estimated to be available and obligated by the Indian Health Service.

2/ Does not reflect $63,000 consultant services funds withheld from obligation as required by Section 515 of the Treasury-Postal Service Appropriations Act, 1986 (P.L. 99-190).

Indian Health Services

Clinical Services

	FY 1986 Appropriation	FY 1986 after Sequestering	FY 1986 Revised Estimate	Proposed Rescission
Hosp & Hlth Clinics	$433,598,000	$429,007,000	$422,216,000	-$6,791,000

Purpose and Method of Operations - The Indian Health Service (IHS) is the component of the Department of Health and Human Services charged with administering the principal Federal health programs for American Indians and Alaska Natives. The organization and delivery of health care by the IHS has its basis in treaties and laws subsequently enacted by the Congress and judicial rulings. The Snyder Act of 1921, IHS' authorizing legislation, linked IHS services to congressional appropriations providing for the use of "...such monies as the Congress may from time to time appropriate, for the benefit, care, and assistance of Indians...". The hospital and health clinics activity, a major component of the IHS and tribal health delivery system, is the primary mechanism for the delivery of clinical health care to the Indian people.

Rationale for the Proposed Rescission - The FY 1986 proposed rescission of $6,791,000 includes the following program reductions.

Program Operations ($2,101,000)
The proposed rescission of $2,101,000 will be absorbed through a reduction in the following: travel and transportation of things; rents, communications, and utilities; printing; contractual services; supplies; equipment; and grants.

Emergency Medical Service (EMS) ($1,738,000)
The FY 1986 President's Budget proposed, as part of an overall program reduction of $10.7 million, to eliminate certain EMS services. The 1986 appropriation restored $3,976,000 of the proposed reduction. The FY 1986 sequestration cancelled $40,000 of the increase provided in the appropriation. The proposed rescission of $1,738,000 reduces the resources available to $2,198,000.

The $2,198,000 remaining after rescission will support the staffing of 65 tribal ambulance service programs which provide emergency medical care on a 24 hour basis through March 31, 1986 and permit an orderly phase down beginning in April 1986.

Indirect Costs ($2,952,000)
The 1986 appropriation provided $2,982,000 for overhead costs of tribal contracts under P.L. 93-638. The FY 1986 sequestration cancelled $30,000 of the increase provided in the appropriation. The proposed rescission eliminates the remaining $2,952,000 of the increase.

The rescissions totalling $6,791,000 are proposed as part of the Administration's effort to reduce the large Federal deficit. The highest priority for the IHS is the provision of basic inpatient and ambulatory patient care services to Indian people living on or near traditional Indian lands. The funds proposed for rescission support activities which although related to basic inpatient and ambulatory patient care are of lower priority.

Indian Health Services

Clinical Services

	FY 1986 Appropriation	FY 1986 after Sequestering	FY 1986 Revised Estimate	Proposed Rescission
Contract Care...	$170,040,000	$168,340,000	$165,866,000	-$2,474,000

Purpose and Method of Operations - The purchase of medical care services from non-service providers (predominately the private sector) is an essential component of the IHS and tribal patient care delivery systems. These contract health services (contract care) are used to supplement other health care resources available to Indian people eligible under governing regulations at 42 CFR 36 Subpart C. Approximately 1,300 contracts exist with health care providers for services on a daily basis. Numerous additional purchase orders are issued during the course of a year for limited services, such as emergency care, from providers not utilized on a regular basis.

The Contract Health Service (CHS) program includes the purchase of General Medical and Surgical Hospitalization such as hospital, physician and other services incidental to inpatient care. Ambulatory care services, including services such as outpatient physician care, laboratory, x-ray and pharmacy are also included within the program. Limited patient and escort travel and dental services are provided. Other costs are incurred to support the direct delivery of care, such as medical referrals, diagnostic services, and needed specialist consultations.

Rationale for the Proposed Rescission - The FY 1986 appropriation provided an increase of $4,174,000 to partially restore a proposed program reduction in the FY 1986 President's Budget request. The FY 1986 sequestration cancelled $1,700,000 of the increase provided in the appropriation. The proposed rescission eliminates the remaining $2,474,000 of the increase. The proposed rescission of $2,474,000 represents a 1.5% reduction from the FY 1986 Appropriation after sequestration.

The proposed rescission of $2,474,000 will result in the following reductions:

	FY 1986 After Sequestering	FY 1986 Revised Estimate	Proposed Rescission	
			No.	%
Hospitals - Admissions.......	21,512	21,201	-311	-1.5%
Days......................	101,105	99,645	-1,460	-1.4%
Average Daily Patient Load	277	273	-4	-1.4%
Ambulatory Outpatient Visits.	239,757	236,233	-3,524	-1.5%
Patient and Escort Trips.....	35,160	34,643	-517	-1.5%
Dental Patients..............	40,162	39,572	-590	-1.5%

The rescission is proposed as part of the Administration's efforts to reduce the large Federal deficit.

Indian Health Services

Preventive Health

	FY 1986 Appropriation	FY 1986 after Sequestering	FY 1986 Revised Estimate	Proposed Rescission
Commun Hlth Rep (CHR)	$25,844,000	$25,585,000	$14,500,000	-$11,085,000

Purpose and Method of Operations - The CHR Program was implemented to improve the health knowledge, attitudes and practices of Indian people by promoting, supporting, and assisting the IHS in delivering a total health care program. The efforts of the CHR program staff produced an Indian and Alaskan Native health service delivery system which provides for follow-up and continued contact with the health care delivery system at the community level, thereby meeting the most basic needs of the Indian and Alaskan Native population.

The goal of the program is to address health care needs through the provision of community-orientea primary care services, including traditional native concepts in multiple settings, utilizing community-based, well-trained, medically-guided health workers.

Rationale for the Proposed Rescission
The FY 1986 President's Budget request proposed elimination of the CHR program in an effort to focus scarce federal resources on maintaining key inpatient and outpatient medical care services. The FY 1986 appropriation provided $25,844,000 to continue the program in FY 1986. The sequestration cancelled $259,000 of the funds provided under the appropriation. The proposed rescission of $11,085,000 will result in the elimination of the program for the remainder of FY 1986. The FY 1986 revised estimate of $14,500,000 will allow the IHS to continue the contractual agreements with American Indian and Alaska Native governments/organizations to manage and operate CHR programs supporting approximately 1,500 CHRs, through March 31, 1986 and provide for the orderly phase down beginning in April.

$14,500,000 will purchase approximately 4,559,748 encounters in the areas of:

1. Gerontological Health
2. Maternal and Child Health
3. Mental Health (alcoholism/drug abuse)
4. Environmental Health
5. Dental Health
6. General Health (e.g., emergency medical services, diabetes, tuberculosis, otitis media, hepatitis, etc.)

The rescission of $11,085,000 for this program is proposed as part of the Administration's effort to reduce the large Federal deficit. The highest priority for the IHS is the provision of basic inpatient and ambulatory patient care services to Indian people living on or near traditional Indian lands. The funds proposed for rescission support activities which are of a lower priority.

Indian Health Services

Urban Health Program

	FY 1986 Appropriation	FY 1986 after Sequestering	FY 1986 Revised Estimate	Proposed Rescission
Urban Hlth Program..	$9,741,000	$9,644,000	$7,200,000	-$2,444,000

Purpose and Method of Operation - Title V of P.L. 94-437 authorizes resources to establish programs in urban areas to assure that health services are accessible to the medically underserved urban Indian population. The IHS is contracting with 37 urban Indian health organizations throughout the United States. These 37 programs are engaged in a wide variety of activities, ranging from the provision of outreach and referral services to the delivery of comprehensive direct health care services. Urban Indian health organizations are providing primary health care to Indian community members and have strengthened outreach and referral services to promote greater use of other local providers of health care in the urban setting.

Rationale for the Proposed Rescission - The FY 1986 President's Budget request proposed elimination of the Urban Health program on the basis that the off-reservation Indians are eligible for alternative health care resources such as, Medicare/Medicaid, community health centers, the National Health Service Corps, State and local health care programs supported by Federal health block grants, and other State and local funding agencies. The FY 1986 appropriation provided $9,741,000 to continue the program in FY 1986. The sequestration cancelled $97,000 of the funds provided under the appropriation. The proposed rescission of $2,444,000 will result in the elimination of the program during FY 1986. The FY 1986 revised estimate of $7,200,000 will support all 37 programs at a level that will permit the gradual phase down of operations beginning in April 1986.

The rescission of $2,444,000 is proposed as part of the Administration's effort to reduce the large Federal deficit. The approximately 400,000 urban Indians whose health care is supported from this program are eligible to receive care from other Federal, State, and local resources.

Indian Health Services

Tribal Management

	FY 1986 Appropriation	FY 1986 after Sequestering	FY 1986 Revised Estimate	Proposed Rescission
Tribal Management	$1,988,000	$1,968,000	$500,000	-$1,468,000

Purpose and Method of Operations - The concept of the Tribal Management program is self-help which has proven to be an effective approach to assisting Tribes to operate and manage their own health programs. This thrust on reservations toward self-sufficiency began in earnest with the passage of P.L. 93-638, the Indian Self-Determination Act, in 1975 and its companion Act, P.L. 94-437, the Indian Health Care Improvement Act, a year later.

The Tribal Management program provides the necessary mechanism to implement capacity building activities, particularly with newly recognized tribes which have little or no development resources. Priority for use of these funds goes to new tribes for the support of planning efforts, training, resource development and management systems.

The IHS is in the eleventh year of implementation of P.L. 93-638. Tribal management of health programs under authority of P.L. 93-638 contracts allows tribes to operate part or all of the health programs provided by the IHS. Since nearly all tribes wanting to manage IHS operated health programs need to development management capabilities, P.L. 93-638 provides the legal authority, and the Tribal Management activity funds provide the resources to support such developmental activities. Tribal management funded projects have led to the development or improvement of program management systems including planning, evaluation, training, and other projects designed to improve the management capability of tribal organizations.

Rationale for the Proposed Rescission - The FY 1986 President's Budget request proposed elimination of the Tribal Management program in an effort to focus scarce Federal resources on maintaining key IHS inpatient and outpatient medical services in FY 1986. The FY 1986 appropriation provided $1,988,000 to continue the program in FY 1986. The sequestration cancelled $20,000 of the funds provided under the appropriation. The proposed rescission of $1,468,000 will result in the elimination of the program for the remainder of FY 1986. The FY 1986 revised estimate of $500,000 will allow continuation of support for general tribal health developmental activities such as health department development, improvement of tribal management systems, health planning and evaluation, technical assistance, training, and other activities designed to improve the capacity of the tribes to operate health programs currently administered by IHS.

The rescission of $1,468,000 is proposed as part of the Administration's effort to reduce the large Federal deficit. The highest priority for the IHS is the provision of basic inpatient and ambulatory patient care services to Indian people living on or near traditional Indian lands. The funds proposed for rescission support activities which are not directly related to inpatient and ambulatory patient care services and which are therefore of lower priority.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

Indian Health Facilities

Fiscal Year 1986 Rescission Budget	Page No.
Appropriation language	95
Amounts available for obligation	96
Summary of changes	97
Obligations by activity	98
Obligations by object	99
Summary of projects	101
Justification:	
Narrative	
A. Hospitals	103
B. Outpatient care facilities	104
C. Sanitation facilities	105
D. Personnel quarters	107

INDIAN HEALTH FACILITIES

Of the funds made available under this head in Public Law 99-190, $38,642,000 are rescinded.

Health Resources and Services Administration

Indian Health Facilities

Amounts Available for Obligation

1986 Appropriation	$46,665,000
1986 Sequester order	- 467,000
Proposed rescission	- 38,642,000
Subtotal, adjusted appropriation	7,556,000
Unobligated balance, start of year	39,105,455
Unobligated balance, end of year	---
Total obligations	$46,661,455

Indian Health Facilities

Summary of Changes

1986 Estimate	$46,665,000
1986 Sequester order	- 467,000
1986 Estimate after sequestering	46,198,000
1986 Revised estimate	7,556,000
Net Change	- 38,642,000

	1986 Base	Change from base
Decreases:		
Program:		
1. Hospitals:		
New & Replacement		
Rescinds funds for:		
planning and design of a replacement facility at Kotzebue, AK;	$ 1,958,000	-$ 1,958,000
phase I construction and purchase of long-lead equipment for a replacement facility at Rosebud, SD	$10,304,000	-$10,304,000
Total New & Replacement	$12,262,000	-$12,262,000
Modernization & Repair		
Rescinds $639,000 of $1,278,000 for modernization and repair project for Ft. Defiance, AZ Hosp.	$ 3,050,000	-$ 639,000
2. Outpatient Care Facilities		
Rescinds funds for:		
planning a replacement facility at Toppenish, WA;	$ 616,000	-$ 616,000
completion of planning for the replacement facility at Wagner, SD	$ 99,000	-$ 99,000
Total Outpatient Care Facilities	$ 715,000	-$ 715,000
3. Sanitation Facilities		
Rescinds funds for the provision of sanitation facilities.	$24,601,000	-$19,456,000
4. Personnel Quarters		
Rescinds funds for:		
construction of 26 units of quarters at Kanakanak, AK;	$ 4,133,000	-$ 4,133,000
13 units of quarters at Ft. Thompson, SD;	$ 1,279,000	-$ 1,279,000
renovation of 8 existing quarters at Sacaton, AZ.	$ 158,000	-$ 158,000
Total Personnel Quarters	$ 5,570,000	-$ 5,570,000
Total decreases	$46,198,000	-$38,642,000

Indian Health Facilities

Obligations by Activity

	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Hospitals..................	$36,599,616	$36,444,616	$23,543,616	-$12,901,000
(Budget Authority).........	(15,467,000)	(15,312,000)	(2,411,000)	(-12,901,000)
Outpatient Care Facilities.	12,279,374	12,272,374	11,557,374	-715,000
(Budget Authority).........	(722,000)	(715,000)	(---)	(-715,000)
Personnel Quarters.........	11,302,853	11,246,853	5,676,853	-5,570,000
(Budget Authority).........	(5,626,000)	(5,570,000)	(---)	(-5,570,000)
Sanitation Facilities......	25,588,612	25,339,612	5,883,612	-19,456,000
(Budget Authority).........	(24,850,000)	(24,601,000)	(5,145,000)	(-19,456,000)
Total Obligations........	$85,770,455	$85,303,455	$46,661,455	-$38,642,000
(Total Budget Authority).	($46,665,000)	($46,198,000)	($7,556,000)	(-$38,642,000)

319

Indian Health Facilities

Obligations by Object

Program and Financing	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Total obligations.............	$85,770,455	$85,303,455	$46,661,455	-$38,642,000
Unobligated balance, start of year...............	- 39,105,455	- 39,105,455	- 39,105,455	---
Unobligated balance, end of year.................	---	---	---	---
Appropriation.................	$46,665,000	$46,198,000	$ 7,556,000	-$38,642,000
Personnel compensation:				
Other than full-time permanent....................	$ 4,700,000	$ 4,700,000	$ ---	-$ 4,700,000
Other personnel compensation..	900,000	900,000	---	- 900,000
Total personnel compensation..	5,600,000	5,600,000	---	- 5,600,000
Personnel benefits..............	450,000	450,000	---	- 450,000
Travel and transportation of persons....................	750,000	750,000	---	- 750,000
Transportation of things........	1,030,000	1,030,000	---	- 1,030,000
Rent, communications, and utilities:				
Communication, utilities and miscellaneous charges.......	240,000	240,000	---	- 240,000

Indian Health Facilities

Obligations by Object

	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Printing and reproduction.......	$ 20,000	$ 20,000	$ ---	-$ 20,000
Other services..................	7,378,551	7,286,551	2,551,551	- 4,735,000
Supplies and materials..........	5,700,000	5,630,000	1,900,000	- 3,730,000
Equipment.......................	6,557,039	6,557,039	4,244,039	- 2,313,000
Lands and structures............	58,044,865	57,739,865	37,965,865	- 19,774,000
Total obligations.............	$85,770,455	$85,303,455	$46,661,455	-$38,642,000
(Total budget authority)......	($46,665,000)	($46,198,000)	($ 7,556,000)	(-$38,642,000)

Indian Health Facilities
FY 1986
Summary of Projects

Project	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Hospitals:				
New and Replacement:				
Rosebud, SD-Repl-Phase I Const. and Purchase of Long-lead Equipment 1/	$10,408,000	$10,304,000	$ ---	-$10,304,000
Kotzebue, AK-Repl-Planning and Design	1,978,000	1,958,000	---	- 1,958,000
Total, New & Replacement......................	12,386,000	12,262,000	---	- 12,262,000
Modernization and Repair:				
Ft. Defiance, AZ Hospital	1,292,000	1,278,000	639,000	- 639,000
Belcourt, ND Hospital	696,000	689,000	689,000	---
Albuquerque Area Hospitals (Zuni, Acoma-Canoncito-Laguna, Albuquerque & Santa Fe)	420,000	416,000	416,000	---
Bethel, AK Hospital-Personnel Qtrs	497,000	492,000	492,000	---
Colville, WA Health Center	176,000	175,000	175,000	---
Total, Modernization & Repair................	3,081,000	3,050,000	2,411,000	- 639,000
Total Hospitals...............................	15,467,000	15,312,000	2,411,000	- 12,901,000
Outpatient Care Facilities:				
Toppenish, WA-Repl-Planning	622,000	616,000	---	- 616,000
Wagner, SD-Complete Planning 1/	100,000	99,000	---	- 99,000
Total Outpatient Care Facilities............	722,000	715,000	---	- 715,000
Personnel Quarters:				
Kanakanak, AK-Plan, Construct and Equip 26 Units of Quarters	4,175,000	4,133,000	---	- 4,133,000
Ft. Thompson, SD-Plan, Construct and Equip 13 Units of Quarters	1,292,000	1,279,000	---	- 1,279,000
Sacaton, AZ-Renovate 8 Existing Quarters	159,000	158,000	---	- 158,000
Total Personnel Quarters.....................	5,626,000	5,570,000	---	- 5,570,000

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Indian Health Facilities
FY 1986
Summary of Projects

Project	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Sanitation Facilities..............................	$24,850,000 2/	$24,601,000	$5,145,000	-$19,456,000
(Number of New and Improved Homes)............	(2,880) 2/	(2,850)	(650)	(-2,200)
Total Indian Health Facilities............	$46,665,000	$46,198,000	$7,556,000	-$38,642,000

1/ The following table reflects projects with previous funding (dollars in thousands):

Project	Fiscal Year	Amount	Purpose of Funding	Status of Project
Hospitals:				
New and Replacement:				
Rosebud, SD-Replacement	1982 1985	$1,248 1,006	Planning Site Work	Design phase estimated to be completed Spring 1986
Outpatient Care Facilities:				
Wagner, SD	1984	360	Initial Planning	Program information document not approved

2/ Includes $4,970,000 for the construction of sanitation facilities to approximately 300 new homes in support of the Navajo and Hopi Indian Relocation Act.

Indian Health Facilities

Hospitals	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
New and Replacement......	$12,386,000	$12,262,000	$ ---	-$12,262,000
Modernization and Repair..................	3,081,000	3,050,000	2,411,000	- 639,000

Purpose and Method of Operations - The Indian Health Facilities construction program is concerned with the provision of medical and health facilities needed to provide health services directly to American Indians and Alaska Natives. Under the authority of P.L. 83-568, Transfer Act, the Indian Health Service constructs new or replacement health facilities, and repairs and modernizes existing facilities.

Rationale for the Proposed Rescission - The Fiscal Year 1986 appropriation after sequestering provided $15,312,000 for phase I construction and purchase of long-lead equipment for the replacement hospital at Rosebud, South Dakota ($10,304,000); planning and design of a replacement hospital at Kotzebue, Alaska ($1,958,000); and modernization and repair at the following facilities: Ft. Defiance, Arizona Hospital ($1,278,000); Belcourt, North Dakota Hospital ($689,000); Albuquerque, New Mexico Area Hospitals (Zuni, Acoma-Canoncito-Laguna, Albuquerque, and Santa Fe) ($416,000); Bethel, Alaska Personnel Quarters ($492,000), and Colville, Washington Health Center ($175,000).

The proposed rescission of $12,901,000 under the "Hospitals" activity include funds for phase I construction and purchase of long-lead equipment for the replacement hospital at Rosebud, South Dakota ($10,304,000); planning and design of a replacement hospital at Kotzebue, Alaska ($1,958,000); and a reduction in the scope of modernization and repair project at the Ft. Defiance, Arizona Hospital from $1,278,000 to $639,000.

The rescission of $12,901,000 is proposed as part of the Administration's effort to reduce the Federal deficit, and to curtail the outlay of Federal funds for capital construction and improvement projects.

Indian Health Facilities

	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Outpatient Care Facilities...............	$722,000	$715,000	$ ---	-$715,000

Purpose and Method of Operations - The Indian Health Facilities construction program is concerned with the provision of medical and health facilities needed to provide health services directly to American Indians and Alaska Natives. Under the authority of P.L. 83-568, Transfer Act, the Indian Health Service constructs new or replacement health centers and stations.

Rationale for the Proposed Rescission - The FY 1986 appropriation after sequestering provided $715,000 to plan the construction of a replacement health center at Toppenish, Washington ($616,000), and to complete planning of a replacement health center at Wagner, South Dakota ($99,000). The proposed rescission of $715,000 would eliminate funding of these two projects.

The rescission of $715,000 is proposed as part of the Administration's effort to reduce the large Federal deficit, and to curtail the outlay of Federal funds for capital construction and improvement projects.

Indian Health Facilities

	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Sanitation Facilities......	$24,850,000	$24,601,000	$5,145,000	-$19,456,000

Purpose and Method of Operations - The Indian Health Facilities construction program provides the sanitation facilities needed for Indian homes. Under the authority of P.L. 86-121, Indian Sanitation Facilities Act; Title III of P.L. 94-437, Indian Health Care Improvement Act; and P.L. 96-537, Indian Health Care Amendments of 1980; the Indian Health Service (IHS) constructs the required sanitation facilities for Indian homes. This program is an integral component of a comprehensive health services program which has as its goal the elevation of the health of federally recognized American Indians and Alaska Natives to the highest possible level. As with the other activities of the IHS, sanitation facilities projects are carried out as a cooperative effort with the people to be serviced by the completed facilities. The program provides sanitation facilities, emphasizing the "total community" concept, to existing homes and communities and homes sponsored by various Federal and State agencies, and tribes. Through the Interdepartmental Agreement the IHS has, for many years, provided sanitation facilities through a well coordinated effort to new and renovated homes sponsored by the Department of the Interior and the Department of Housing and Urban Development (HUD). These projects, from the beginning of the preconstruction activities to the transfer of the facilities to the tribes for ownership, and operation and maintenance, generally take 3 to 4 years to be completed.

Rationale for the Proposed Rescission - In FY 1986, Congress appropriated $24,850,000 to fund projects for the provision of sanitation facilities to an estimated 1,300 BIA-HIP housing units that will have construction/renovation initiated in FY 1986 (including approximately 300 homes for relocatees pursuant to the Navajo-Hopi Indian Relocation Act), and approximately 1,580 non-HUD housing units anticipated to be constructed by the tribes and various other Federal and non-Federal entities.

The sequestering of $249,000 eliminated support for approximately 30 new homes. The FY 1986 revised estimate of $5,145,000 will provide sanitation facilities to approximately 650 new/rehabilitated Indian homes.

The proposed rescission of $19,456,000 will eliminate support for sanitation facilities to an estimated 2,200 new/rehabilitated Indian homes to be under construction or completed in FY 1986 (including support of sanitation facilities for approximately 300 homes for relocatees pursuant to the Navajo-Hopi Indian Relocation Act).

Outputs	FY 1986 Appropriation	1986 Available After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
No. of New and Improved Homes	2,880 1/	2,850 1/	650	-2,200

1/ Includes construction of sanitation facilities to approximately 300 new homes in support of the Navajo and Hopi Indian Relocation Act. The rescission would eliminate support for this construction.

The rescission of $19,456,000 is proposed as part of the Administration's effort to reduce the large Federal deficit, and to curtail the outlay of Federal funds for capital construction and improvement projects.

Indian Health Facilities

	1986 Appropriation	1986 After Sequestering	1986 Revised Estimate	1986 Proposed Rescission
Personnel Quarters.........	$5,626,000	$5,570,000	$ ---	-$5,570,000

Purpose and Method of Operations - The Indian Health Facilities construction program provides the personnel quarters needed to house Indian Health Service staff at isolated locations. Under the authority of P.L. 83-568, Transfer Act, the Indian Health Service constructs the required housing.

Rationale for the Proposed Rescission - The FY 1986 appropriation after sequestering provided $5,570,000 to construct 26 units of personnel quarters at Kanakanak, Alaska ($4,133,000), 13 units of quarters at Ft. Thompson, South Dakota ($1,279,000), and the renovation of 8 existing quarters at Sacaton, Arizona ($158,000). The proposed rescission of $5,570,000 will eliminate funding for these projects.

The rescission of $5,570,000 is proposed as part of the Administration's effort to reduce the large Federal deficit, and to curtail the outlay of Federal funds for capital construction and improvement projects.

Mr. **Murtha**. Welcome, Dr. Rhoades, and if you will identify your colleagues for the record and proceed. Your testimony will, of course, appear in the record. If you will summarize, we will move along.

OPENING STATEMENT

Dr. **Rhoades**. Thank you, Mr. Chairman.

My name is Everett Rhoades. I am Director of the Indian Health Service. On my immediate right is Mr. Bill Pearson, who is the coordinator of our facilities construction program. On my immediate left is Mr. Milburn Roach, who is the Associate Director; on my far left is Dr. Edward Martin. He is the Deputy Administrator of the Health Resources and Services Administration.

Mr. Chairman, we are here to present to you the budget for fiscal year 1987, and are prepared to discuss with you that budget. I have an opening statement which I will not read——

Mr. **Murtha**. It will appear in the record.

Dr. **Rhoades**. I would just like to emphasize that the Indian Health Service continues to operate a community-oriented primary care program. The budget request contains the resources that will permit the Indian Health Service to maintain this community-oriented primary care system. It does include the reductions that reflect the Indian Health Service's contribution to achieving the goal of reducing the overall budget deficit, as has been expressed, for instance, by Congress itself in the Balanced Budget and Emergency Deficit Control Act, commonly referred to as Gramm-Rudman-Hollings.

I don't think it is necessary for me to describe the strained conditions that the economy of the United States is in and the effect that it has on health care delivery for the entire population of the United States, not excluding the the Indian Health Service. In spite of these constraints, the Indian Health Service has made a number of significant advances in the last two or three years in the field of health care delivery. I might mention the continued very high level of immunized status of children under school age. The hepatitis B eradication program in the State of Alaska, which has been going on since 1982, looks like it is on the verge of a resounding success. The initial information that we have suggests that the attack rate of hepatitis B in certain Alaskan natives has fallen from an attack rate of something like 240 per hundred thousand to less than 10 per hundred thousand. If that turns out to be true, that will be a major success.

In the field of management, we have continued to make improvements in the accountability and responsiveness of the Indian Health Service, and I won't list those various accomplishments. They may come out during the course of the hearing.

We are here to answer questions that you might have, Mr. Murtha.

[The statement of Everett Rhoades follows:]

STATEMENT OF THE DIRECTOR OF THE INDIAN HEALTH SERVICE

Mr. Chairman and Members of the Committee:

I am Dr. Everett Rhoades, Director of the Indian Health Service. I am accompanied by Dr. Edward Martin, Acting Deputy Administrator of the Health Resources and Services Administration, and from the Indian Health Service, Mr. Milburn Roach, Acting Associate Director for Administration and Management, and Mr. Bill Pearson, Coordinator, Office of Environmental Health and Engineering. We are pleased to be here today to discuss with you the Fiscal Year 1987 budget request for Indian Health programs.

The Indian Health Service (IHS) is the Federal bureau charged with administering the principal health program for American Indians and Alaska Natives. The goal of the IHS is to raise the health status of Indian and Alaska Native people to the highest possible level. Its mission is threefold: 1) to provide and/or assure the availability of high quality comprehensive, accessible health services; 2) to provide increasing opportunities for Indians to manage and operate their own health programs; and 3) to serve as a health advocate for Indian people. In FY 1987, the IHS will continue its mission by providing comprehensive health services to over one million Indian and Alaska Native people.

Since the transfer of Indian Health programs from the Department of the Interior to the Public Health Service in 1955, this comprehensive health delivery system has developed into two modes of delivery. First, the direct health delivery system, which is administered directly by IHS staff, provides services through the operation of 45 hospitals, 71 health centers, and several hundred smaller health stations and satellite clinics. The second is the tribal health delivery system, which is administered by tribes and tribal organizations through contracts with the IHS. These tribal organizations operate 6 hospitals and approximately 250 health clinics.

The purchase of medical care from non-IHS and non-tribal providers is designated contract health services and is considered to be an integral part of the IHS health care system. Contract health services represent services either not available in IHS's direct or tribal facilities, or in locations where no IHS or tribal facility exists.

The FY 1987 budget request, which we are here to discuss, contains the resources that will permit IHS to maintain the above systems while at the same time it includes some reductions that represent the Indian Health Service's participation in achieving the goal of reducing the overall budget deficit as expressed in the Balanced Budget and Emergency Deficit Control Act commonly referred to as the Gramm-Rudman-Hollings Act.

For Fiscal Year 1987, the budget request for the IHS includes $799.1 million in total obligations and $722.4 million in budget authority, of which $720 million is for Indian Health services and $2.4 million is for the Indian Health facilities modernization and repair program currently under the Indian Health Facilities appropriation.

The FY 1987 budget request of $720 million for Indian Health services reflects a decrease of approximately $64 million from the 1986 revised request, which includes the effect of the sequestration of $10.4 million and rescissions totalling $24.3 million. Some of the $64 million decrease will be offset by increased collections achieved by intensifying efforts to collect from third-party payors, making management improvements, and reducing the cost of the contract health services program through negotiating lower rates. The FY 1987 request is consistent with the President's commitment to economic recovery and to the continued provision of quality health care to American Indian and Alaska Native people.

For the Clinical Services activities, the FY 1987 request of $620 million, a decrease of $38 million from the FY 1986 request, assumes a $25 million increase in third-party reimbursements from the FY 1986 estimate of $44 million.

Of the projected $25 million increase in reimbursements, an estimated $8 million would be collected from private insurance companies, which have issued health insurance policies to IHS beneficiaries. The $8 million in estimated reimbursements from private insurance companies assumes that the exclusionary clauses in insurance policies are removed or overcome and that itemized bills, providing necessary clinical information, can be rendered to the insurance companies consistent with private health insurance standards. The exclusionary clauses prohibit payment for services rendered in a federal facility because the policy holder has no liability to pay for the services. An administrative provision has been proposed in the IHS appropriations language which would allow IHS to take whatever steps are necessary to collect from third-party payors.

The remaining $17 million of the projected increase in reimbursements assumes additional reimbursements will be collected from Medicare and Medicaid through intensified efforts to identify Medicare and Medicaid beneficiaries among the IHS beneficiary population and continued improvements in billings associated with expansion of the automated billing and collection system.

The FY 1987 request for the Clinical Services activities also reflects a decrease of over $27 million from the FY 1986 revised request in the Contract Health Services activity. This decrease assumes that IHS will be able to pay health care providers at no more than the Medicare allowable rates. A notice will be published in the Federal Register notifying providers of the IHS policy.

Almost $38 million is requested to maintain Preventive Health activities in the areas of Sanitation, Public Health Nursing and Health Education; and $395,000 is requested to continue the immunization program in Alaska at a maintenance level.

For the Indian Health Manpower activity, $5.4 million is requested to support all continuation scholarships. as well as the In-Med, MPH, Extern and Preparatory programs.

The FY 1987 request for the Direct Operations activity is $56.2 million, a small decrease from the FY 1986 revised request. This decrease assumes management improvements will result in dollar savings in the areas of space, travel, consultant services, equipment and supplies, etc. Included in the request is $2.5 million to expand the Resources and Patient Management System.

I am pleased to report that we have made a number of program achievements in FY 1985 and FY 1986. These accomplishments fall into three broad areas: health services, management improvements, and Indian self-determination activities.

Let me cite one example. I feel that continued implementation of the Resource Patient Management System (RPMS) provides the needed mechanism for more cost effective management of the IHS in FY 1987 and future years. The RPMS is an ambitious, but important innovation to IHS programming. When fully implemented, the RPMS will place multi-user computers at IHS Areas, Service Units, Hospitals, and Health Centers to support administrative functions, hospital operations and patient care in general, and local data collection and processing in a variety of application areas.

Benefits to the derived from this system are many and varied. Essentially the system will result in greater cost savings by improving third-party collection procedures, and will provide management at all levels of the organization greater and more timely information to assist in the deployment of resources. RPMS will also have positive benefits on patient care by providing clinicians easy access to a reliable source of patient data to assist in medical decision-making.

Mr. Chairman and members of the Committee, I will be pleased to answer any questions you may have on the specifics of the FY 1987 budget request.

PROPOSED REDUCTIONS IN FY 1986

Mr. **Murtha**. I appreciate that. The 1987 request for the Indian Health Service is $722 million, a decrease of $142 million, or 19.7 percent from the 1986 appropriation level. When the adjustments to the 1986 appropriation are taken into account, including reduction of $10,896,000 for Gramm-Rudman and proposed rescissions of $62,904,000, the 1987 request represents a decrease of $68,681,000, or 9.5 percent.

As in prior years, there is no request for the community health representatives, urban health projects, or facilities construction, except $2,450,000 for repair projects. The proposed rescission includes $24,262,000 from the health services account and $38,642,000 from the facilities account. It would result in zeroing out the CHR and urban programs, as proposed in the 1986 budget, but not agreed to by the Congress, and would take all the funds added by Congress for facilities, except those funds already obligated for sanitation facilities, which is about $5 million, and the modernization and repair funds included in the 1986 budget request.

The President signed the Gramm-Rudman bill into law, which limited the 1986 cuts of the IHS program, except the administrative costs, to one percent. Aren't these proposed rescissions, which total over seven percent of the 1986 appropriations, a repudiation of the law the President signed and agreed to follow?

Dr. **Rhoades**. I do not believe that they are. I haven't calculated the percentage that you just went over, but it is my understanding that the effect of Gramm-Rudman is precisely what was directed by Congress.

Mr. **Murtha**. The rescissions obviously weren't included in the——

Dr. **Rhoades**. I am sorry if I said rescissions. I misspoke. Gramm-Rudman refers to sequestration.

Mr. **Murtha**. Let me go back. In other words, if you take the percentage we are talking about, you include the rescissions that were made, that's how you come up with the percentage cut. What we are asking is, under Gramm-Rudman, there was a certain percentage cut. You are saying that from a technical standpoint, you abide by the law because the rescissions in your estimation are not included. Is that what you are saying?

Dr. **Rhoades**. Yes, sir. That is what I intended to say. If your question was an all-inclusive question about the percentage reduction, Gramm-Rudman plus the rescissions, my answer reflected only that portion that was involved with Gramm-Rudman.

Mr. **Murtha**. We have got a real problem here with agreements we made. Whether I personally agree or disagree with it, the problem we run into is at the end of the year, we make an agreement with you, and the priorities; the whole Congress, the Senate and the President agree on certain priorities. Then two months later you come back with a rescission, and that causes a real, real problem for us after we have just made an agreement on where the cuts should be.

Of course, Gramm-Rudman tries to address that, because it says the cuts have to be across the board, and this was the agreement we came to, and we have seen deferrals, in particular, in some cases which are completely unacceptable to us, causing us a real problem, and we can deal with rescissions, but it does put us in a difficult position when you come in with these deferrals after we just reached to a policy agreement with the President, the Executive Branch, and with the Senate on where this money should be spent this year.

I know Gramm-Rudman adds to it. But this has happened across the board, and this is a small portion of it, but it really is hard for us, when we make an agreement, to have rescissions and deferrals confronting us the minute we come back into session. It makes us look like the agreement is trying to change the thrust of what happened with Gramm-Rudman.

Assuming Congress does not agree to the proposed rescissions, the programs proposed for termination will continue as intended by Congress when the funds were provided in the 1986 appropriations. What kind of instructions have been given to the programs that would be terminated under your rescission proposal?

Dr. RHOADES. The instructions that those programs have received from us is that they have been funded based upon an expectation that Congress may act on the rescissions within a 45-day period. The major decision, of course, would be that if the rescissions are accepted by Congress, those programs have been alerted and instructed to be prepared to be phased out at the end of April.

Mr. MURTHA. But from a practical standpoint, they are going forward until Congress has a chance to look at them, or are they actually cutting back now?

Dr. RHOADES. They are not cutting back now as a result of the rescission.

IMPACT OF GRAMM-RUDMAN

Mr. MURTHA. Are there any major impacts from the Gramm-Rudman cuts in 1986?

Dr. RHOADES. We believe, after analyzing all of the effects of Gramm-Rudman, that the effects will be fairly minimal, and we believe can be absorbed within the existing operations of Indian Health Service.

As you pointed out earlier, the percentage of the reduction in the administrative portion of Gramm-Rudman will have a greater effect on direct operations, I think, which is to be expected.

MEDICARE/MEDICAID COLLECTIONS

Mr. MURTHA. Again, as in prior years, the budget assumes sharp increases in Medicare-Medicaid collections to $69,100,000, an increase of $25,240,000 and 58.2 percent over 1986. The estimates have always been overstated, generally by about one-third, in past years.

For example, in 1984, $26.9 million was obligated compared to an original estimate of $40 million. The original estimate for 1985, reported a year ago, was $54.1 million. What were actual collections in 1985?

Dr. RHOADES. Just a moment, I will provide those for you, Mr. Murtha. In 1985, the collections from Medicare and Medicaid were $32.9 million.

Mr. MURTHA. What is the percentage of your original estimate?

Dr. RHOADES. I am sorry, I will have to—just looking at it, it is close to one-third less, I would say. Between a fourth and a third.

Mr. MURTHA. What is the basis for assuming collections will increase to $69.1 million? We would like to have that person on our staff, so we can see if we can't find a little money in our budget here in that way.

Dr. RHOADES. The estimate of $69 million includes $8 million that is anticipated to be collected from private insurance, leaving $61 million for Medicare and Medicaid. It is perhaps a matter of judgement whether that is unrealistic or not. I would describe it as perhaps being optimistic.

Mr. MURTHA. The budget also assumes the increase of $25,240,000 in collections would be used to fund built-in mandatory increases providing health care, $15,548,000; and to offset partially the program decrease in hospitals and clinics, $9,692,000. Isn't this proposal in violation of the law, which states Medicare-Medicaid collections shall be placed in a special fund and used by the Secretary exclusively for the purposes for making any improvements in the facilities which may be necessary to achieve compliance with the applicable conditions and requirements?

Dr. RHOADES. Mr. Chairman, the budget proposal contains language that, if enacted, would make it legal, therefore, to use it that way.

Mr. MURTHA. If the estimated increase of $25,240,000 in collections is not received and is not available to cover the mandatory and program costs, what will be the impact?

Dr. RHOADES. I would have to submit that for the record.

[The information follows:]

If IHS cannot collect the total amount of reimbursements projected in the FY 1987 budget request, IHS will reassess the resources available for clinical services operations and make the necessary adjustments in the level or range of services provided in order to maintain acute clinical care services directed at preserving life.

Mr. MURTHA. If the real trend in collections continues, as in previous years, what amount would you reasonably expect to collect in fiscal year 1986 and fiscal year 1987?

Dr. RHOADES. I think that we would expect to collect the amount of money that is reflected in the budget. Based upon previous experience, I think it is not unreasonable to assume that there may be a shortfall in that. I am not prepared to say how much that is.

Mr. MURTHA. Historically, it looks like it will be close to a one-third shortfall, at least.

Dr. RHOADES. I don't believe it will be that great, but that is an opinion, based upon the increases that have indeed been occurring in our collections.

Mr. MURTHA. How realistic are the projected increases in the number of Medicare and Medicaid beneficiaries you would have to bring into the system in order to reach the dollar goal in the budget?

Dr. RHOADES. I am not aware we submitted an estimate of the number of beneficiaries that would need to be covered for that.

Mr. MURTHA. If you are going to increase collections, you will have to increase Medicare and Medicaid beneficiaries in order to get that extra money.

Dr. **Rhoades**. Not completely. I don't deny the accuracy of that statement. I believe that a good deal of the increased collections that we have experienced have come from improved management techniques of the Indian Health Service to insure the maximum collection available from the existing patient load.

Mr. **Murtha**. Has the percentage of collections gone up in the last couple of years?

Dr. **Rhoades**. Yes, sir, it has.

Mr. **Murtha**. What was the difference between, say 1985 and 1986?

Dr. **Rhoades**. We have collected for the first four months of fiscal year 1986, $18 million. It would be somewhat inaccurate to just assume that that could be multiplied by three, because it is not a straight line. But that does represent an increase over last year's experience.

Mr. **Murtha**. How much of these funds would be required to carry out the purposes for which authorized, for instance, making improvements in facilities to maintain accreditation and the ability to make Medicare-Medicaid collections?

Dr. **Rhoades**. I am sorry, I don't understand—how much of the collections?

Mr. **Murtha**. Yes. How much of the collections would have to be used, say, for when you have a problem with accreditation in some of these places?

Dr. **Rhoades**. We estimate the unmet need for those kinds of corrections to be approximately $50 million.

Mr. **Murtha**. Will this leave any funds for the purposes you are proposing, assuming Congress would allow you to violate the law?

Dr. **Rhoades**. If the so-called offset were permitted, yes, some funds would be left to correct those deficiencies in the accreditation process.

Mr. **Murtha**. Why are you showing an increase in Medicare-Medicaid collections to be used for personnel services, on page 70, of $7.6 million, while maintenance and repair projects decrease by $5.6 million and equipment by $2 million from the 1986 estimated levels?

Dr. **Rhoades**. The major use of all Indian Health Service funds for the health care program is basically personnel. And in the cited deficiencies by the Joint Commission on the Accreditation of Hospitals, personnel is one of the major deficiencies, and we follow that distribution, and that is why it comes out that way.

Mr. **Murtha**. Why was there an unobligated balance of Medicare-Medicaid funds at the start of fiscal year 1986 of $13,131,256? Isn't that higher than usual?

Dr. **Rhoades**. I believe that shows a balance of collections that were made at the end of the year or after the end of the fiscal year. We have a process of planning and utilizing those funds without any real carryover. The apparent carryover is the lag period between the time of billing and collecting.

Mr. **Murtha**. So there is no need to have the unobligated funds, it is just a technical problem where you collected them towards the end of the year, and they just happen to be there, is that it?

Dr. **Rhoades**. I wouldn't say there is no need to have them. As you recall, when Congress enabled us to use those funds, they permitted those funds to be obligated over a two-year period, and that has proven to be very helpful.

Mr. **MURTHA**. Is there a reason to have the larger amount— —

Dr. **RHOADES**. No, sir.

Mr. **MURTHA**. Would that be substantially less by this time?

Dr. **RHOADES**. I am sorry?

Mr. **MURTHA**. Would that be less by this time? Would you have obligated that money by this time?

Dr. **RHOADES**. I would expect so. I would be happy to provide for the record the actual experience.

[The information follows:]

The Indian Health Service has the authority to obligate Medicare and Medicaid collections during the fiscal year in which the collections are actually received and during the following fiscal year. This authority was provided to the IHS to preclude the lapse of these funds at the end of the fiscal year in which they are collected. There is some lag time experienced between the time the funds are collected and the operational plans can be effected for their obligation and expenditure.

The following provides the status of the FY 1986 beginning of year unobligated balance of $13,131, 256, as of the end of January, 1986:

Medicare/Medicaid collection in fiscal year 1985	$32,989,199
Obligations in fiscal year 1985	−19,857,943
Unobligated balance beginning of fiscal year 1986	13,131,256
Obligations end of January 1986	−7,909,460
Balance to be obligated by end of fiscal year 1986	5,221,796

PRIVATE INSURANCE COLLECTIONS

Mr. **MURTHA**. The budget also assumes a collection of $8 million from private insurers. The administration intends to submit legislation which would give IHS the authority to bill, collect and use reimbursements from third-party payors. The language in the Interior Appropriation bill prohibiting such billing, absent action by Congress, to establish a billing process is proposed to be stricken. What is the status of the proposed legislation?

Dr. **RHOADES**. We have submitted requests for legislation, and I believe that that is in the process of discussion in the department.

Mr. **MURTHA**. So you not only don't have any legislation formulated yet, you can't make any prediction on what possibility there would be of passage of the legislation?

Dr. **RHOADES**. Such predictions are certainly far beyond my capacity.

Mr. **MURTHA**. I think you are perhaps premature in striking appropriation bill language until Congress gets a chance to look at your proposed legislation, and even then, as you well know, it takes years sometimes to pass legislation if it becomes controversial.

What is the basis of the estimate of $8 million in collections in fiscal year 1987, assuming the legislation is in place? And how was the estimate derived?

Dr. **RHOADES**. A couple of years ago, I don't know the exact year, a contract was let with a consulting firm to come up with those kinds of estimates, and after making an analysis, that was a projection that was provided by that independent group.

Mr. **MURTHA**. How about sending over to the committee the background information?

Dr. **RHOADES**. We would be happy to.

[The information follows:]

In August 1984, Macro Systems, Inc., submitted a report titled "Final Report of an Assessment of Private Insurance Coverage and Medicare/Medicaid Reimbursement among Indians Eligible for Health Care Provided by the Indian Health Services" to the Department of Health and Human Services. We are providing the Committee several pages from the report which provides the Macro Systems, Inc., estimate of private insurance billings and collections which was the basis of the estimate contained in the FY 1987 budget.

FINAL REPORT OF AN ASSESSMENT OF PRIVATE INSURANCE COVERAGE AND MEDICARE/ MEDICAID REIMBURSEMENT AMONG INDIANS ELIGIBLE FOR HEALTH CARE PROVIDED BY THE INDIAN HEALTH SERVICE

Submitted to:

Department of Health and Human Services
Office of the Assistant Secretary
for Planning and Evaluation

Prepared by:

Lanny J. Morrison
Suzanne Kitchen
J. Scott Goodman
Kerry Zimmerman

Macro Systems, Inc.

August 1984

2. THE ESTIMATED PRIVATE INSURANCE BILLINGS AND COLLECTIONS

Based upon IHS experience to date, we estimate that IHS will collect approximately $75,000 in private insurance reimbursements in Fiscal Year 1984, mostly for the Navajo Area.

Exhibit II-2 shows the estimated billings for private health insurance by Area. This level of billings assumes that IHS would identify all Indian patients having private health insurance and that insurance companies would be billed in an efficient manner for services provided by IHS to these Indians. These figures include both Federally employed, privately-insured Indians having access to IHS facilities, and non-Federally employed privately-insured Indians. We show the estimated billings under two varying assumptions: (1) that privately-insured Indians receive one-half of their health care from IHS, or (2) that privately-insured Indians receive one-fourth of all their health care from IHS.

Estimated Private Insurance Billings By IHS

	50% Utilization	25% Utilization
• FY 1984	$8,031,593	$4,016,476
• FY 1985	$8,230,341	$4,116,236
• FY 1986	$8,435,073	$4,218,372
• FY 1987	$8,645,078	$4,323,480

Two separate methods were employed for the private insurance billing and collection estimates. IHS private insurance collections for Fiscal Year 1984 were based on historical performance to date. These estimates are based primarily on the Navajo Area, which has a special insurance policy allowing reimbursement. Some additional reimbursement is expected from Alaska where the IHS is authorized to treat non-Indians and required to bill for those services.

Assuming that data available through IHS Data Processing Services Center (DPSC) were an underrepresentation of the actual number of privately-insured Indians, we opted for a simulation technique to estimate private insurance billings for Fiscal Years 1984-1987. Using personnel data supplied by the Federal government on the private health insurance coverage of Federally employed Indians having access to IHS facilities, we

EXHIBIT II-2

HHS, Office of the Assistant Secretary
for Planning and Evaluation

ESTIMATED IHS PRIVATE INSURANCE BILLINGS

Area	1984	1985	1986	1987
1. Assuming 50 Percent Utilization				
Aberdeen	650,429	666,643	682,710	699,571
Alaska	602,477	616,541	631,293	645,693
Albuquerque	364,202	372,403	380,646	388,973
Bemidji	82,195	84,323	86,493	88,704
Billings	125,920	129,574	133,270	137,322
Navajo	1,120,022	1,148,291	1,177,395	1,206,624
Oklahoma City	795,968	812,141	829,066	846,240
Phoenix	907,222	926,451	946,474	966,579
Portland	202,966	207,293	211,744	216,362
Tucson	102,611	104,678	106,787	109,210
USET	141,050	143,094	145,181	147,226
Total	5,095,062	5,211,432	5,331,059	5,452,504
2. Assuming 25 Percent Utilization				
Aberdeen	325,194	333,206	341,491	349,901
Alaska	301,238	308,406	316,326	322,826
Albuquerque	182,122	186,086	190,323	194,371
Bemidji	41,098	42,182	43,226	44,352
Billings	62,960	64,672	66,656	68,640
Navajo	559,990	574,166	588,698	603,312
Oklahoma City	397,984	406,186	414,554	423,235
Phoenix	453,747	463,226	473,373	483,290
Portland	101,462	103,626	105,872	108,160
Tucson	51,306	52,224	53,414	54,605
USET	70,525	71,568	72,570	73,613
Total	2,547,626	2,605,548	2,666,503	2,726,305

341

were able to estimate the total number of Indians (Federal and non-Federal employees and dependents) with private health insurance. These data were then adjusted upward to account for tribal employment. Assumptions were made regarding IHS service utilization and these utilization figures were then multiplied by current IHS reimbursement amounts for inpatient/outpatient services. The resulting figures represent estimated IHS private insurance billings.

* * * *

Although the estimated reimbursements from third-party payors show substantial increases, they are significantly lower than previous estimates used in the budgets for IHS. The estimates of third-party reimbursements for the years 1984-1987 rely heavily upon IHS historical performance. It should be noted that these estimates can and will vary because of the onset of rapid and tumultuous change in methods of calculating reimbursements, as well as budget pressures that result in reduction of State Medicaid programs. The next chapter describes the major factors that impact upon IHS third-party reimbursements.

ADMINISTRATIVE PROVISIONS

Mr. **MURTHA**. Why are you proposing a new administrative provision in the appropriations bill allowing subrogation of claims?

Dr. **RHOADES**. Let me ask Mr. Roach to address that. My understanding is that is a standard, straightforward mechanism that is fairly universal.

Mr. **ROACH**. Mr. Chairman, that provision would allow the Indian Health Service to retain collections that we currently receive from specific activities when we are providing services when a third-party is involved. That provision would allow us to retain and utilize those resources, again, an authority we don't currently have.

Mr. **MURTHA**. Would the proposed legislation provide the authority you seek?

Dr. **RHOADES**. Yes, sir, it would.

Mr. **MURTHA**. Another proposed change in the administrative provisions would provide authority for funds recovered under the Federal Medical Care Recovery Act to be deposited in the collections fund and used at IHS facilities. Describe what kinds of recoveries are allowed under the act cited?

Dr. **RHOADES**. Workers Compensation would be one of the kinds of examples that would provide collections.

Mr. **MURTHA**. How much was collected under the act in 1985?

Dr. **RHOADES**. I would have to provide that for the record. Excuse me just a minute, Mr. Murtha.

Mr. **MURTHA**. Also provide for the record how much you expect to collect in 1986 and 1987.

[The information follows:]

Since IHS files claims but does not now collect funds under the Federal Medical Care Recovery Act (collections are handled by the Justice Department and are deposited with the Treasury), we do not have any data or estimates. The FY 1987 proposed administrative provision would provide the authority for these funds to be returned to IHS.

Mr. **MURTHA**. Why are you proposing to add the administrative provision reinstating special pay for the National Health Service Corps obligees serving in the IHS?

Dr. **RHOADES**. We believe that that is a very useful recruitment device.

Mr. **MURTHA**. If this provision is included, how much additional funding would be used to provide such special pay?

Dr. **RHOADES**. Excuse me. Let me ask Dr. Martin to address that.

Dr. **MARTIN**. I think it is important——

Mr. **MURTHA**. Excuse me, just one minute.

[Recess.]

Mr. **MURTHA**. Dr. Martin, if you will continue with your answer, please.

Dr. **MARTIN**. Since 1983, the National Service Corps Obligors that serve in the Indian Health Service have continued to receive what we call variable special pay. The obligors that serve in the National Health Service Corps have not. The Department forwarded a legislative proposal to Congress last year to take the provision out of the appropriations language and replace it with permanent authorization language. Unfortunately, in that process, an error was made and along with the regular National Health Service

Corps assignees going into the NHSC, the IHS assignees were also penalized.

The administration's position is that the Indian Health Service NHSC obligors, because of the character of the difficult environment, should in fact be paid special pay, but only the IHS obligors. Of the 900 NHSC doctors coming in, only 100 assigned to IHS would receive it. That has been incorporated in every year and continues to be incorporated in the IHS budget. This is simply the administration's attempt to rectify a mistake that was made last year in getting it inadvertently deleted on the other subcommittee side.

Mr. MURTHA. Is there enough funding in the budget to cover this requirement?

Dr. RHOADES. Yes, sir.

Mr. MURTHA. Are the appropriate legislative committees in agreement with adding this provision to the appropriations bill since it would amend substantive law?

Dr. MARTIN. Yes, sir. Both Dr. Natcher's and Dr. Waxman's committees are in full agreement. We anticipate, in addition to the Appropriations Committees' acting, that concurrently the authorizing committees will act.

Mr. MURTHA. Would you explain for the committee the reasons for the provision you are proposing which would provide authority for IHS to recover the cost of care not covered by the Federal Medical Care Recovery Act?

Dr. RHOADES. The rationale for that is the same as the rationale for the same two preceding questions, that is, provide us the authority to utilize those funds; and also we believe that the expression of that language would give us a heavier weight, authority, to attempt to collect those.

Mr. MURTHA. Why didn't you include the authority in the original act?

Dr. RHOADES. I am not sure what the original act refers to.

Mr. MURTHA. The Federal Medical Care Recovery Act.

Dr. RHOADES. I am sorry.

Mr. MURTHA. Why didn't you include the authority for what you want to do in the Federal Medical Care Recovery Act?

Dr. MARTIN. The initial discussion of the Federal Medical Recovery Act was largely in the authorizing committees that dealt substantially with DOD and the Veterans Administration. Because of the magnitude of those two activities, they were the focus of the authorization hearings. In fact, the IHS by oversight was not included because the real basis for that authorization was the VA.

In retrospect, obviously it was an omission in the broader legislative proposal which we are now seeking to rectify.

Mr. MURTHA. Why are we doing this through the appropriations process? We are always getting complaints from the authorizing committees we are changing law, and they don't like that. What is the reason for trying to do this through the appropriations process?

Dr. MARTIN. It is felt that in a number of these particular proposals, this one specifically, because it has a major appropriations impact, it is largely a technical amendment. The administration did not anticipate difficulties with the authorizing committees. It is my understanding that discussions are underway to assure, for example in the case of fiscal impact, that there will not be any conflict.

ELIGIBILITY FOR SERVICES

Mr. MURTHA. You are proposing changes to IHS eligibility regulations. Have the proposed changes been published in the Federal Register yet?

Dr. RHOADES. No, sir; they are awaiting clearance in the department.

Mr. MURTHA. When do you expect them to be published?

Dr. RHOADES. I don't have an estimate as to when an action will be taken on those.

Mr. MURTHA. Would you summarize the substance of the proposed changes and why you think they are necessary?

Dr. RHOADES. The reasons why they are necessary are easier. Let me address that first, Mr. Murtha.

Since I have been Director, and actually preceding my tenure as Director, coincident with acceleration of eligibility population in the 1970s, it was clear, I believe, to knowledgeable individuals that the demand on the system was far outstripping any reasonable availability of resources to provide that care.

I alluded in my opening remarks to the similar situation for all of the United States, and it is fair to say, and I think there is wide agreement on this, that there is a real question as to whether the United States population can afford all of the medical care that is demanded or available because of technological advances. We are caught in that same system. Congress has urged us in the past to sharpen the eligibility requirements as a means of dealing with the realization that the demand may be greater than what is reasonable.

I would go further. My experience indicates to me also that all of the fundamental questions about the Indian Health Service are almost rendered moot until we decide who it is we are to provide services to. That is not a new question. There was a very interesting discussion of that problem in the late 1800s by the then-Commissioner of Indian Affairs. In periods of constrained resources, one has three choices basically to deal with that.

The obvious is to increase the resources, and that is part of the great debate in the entire United States at the present time. In the absence of that, there are only two things one can do. One can decrease the persons that are being served, or one can decrease the services being provided. We make no judgment about the recommendations that are contained in the eligibility changes as we have proposed them.

But unless and until that problem is solved, I don't want to sound dramatic, but I believe that questions of equity and the allocation of resources and the kinds of services to be provided and whom should we give attention to first, in order to reach our continued goal of raising the health status of Indian people to the highest possible level, we have got to know who it is we provide care to.

In the two years that our registration system has been working as part of our management information improvements, it is now clear to me that there are wide, wide disparities between the Indian population identified by the Census and any other count, and the population that presents themselves to us for care. In some instances, there is an apparent deficiency of tribal identified individuals who present themselves for care, and in other facilities that we have, we know we are providing care to more people than are registered members of the respective tribes.

I mention that only to illustrate the nature of the problem. We haven't yet identified it, and I mention it to emphasize that the question of eligibility is a central question for Indian people at the present time. It is a very painful question, obviously, because it is a very personal and important nature of health care that is in contrast to most other services that are provided.

What we propose to do is to examine the question of whether or not we should have one set of criteria for eligibility received directly in our facilities and another for contract health care. That has a somewhat long and tortuous history as well, but we now have two sets of criteria, and this causes, obviously, a great deal of confusion. I don't say what that criteria should be, there should just be one set.

In addition, the long history of the Indian Health Service, I would say, services provided by the Federal Government to Indians, including health, but extending to all other services, have been directed at members of tribes living on or near reservations. And we have tended to follow that except that we have used a designation of membership in a tribe simply as a marker to identify the descendants of a tribe. We do not restrict our services only to members of tribes. If we did that, we would eliminate a substantial number of Indian people for care.

The consideration—again that is not new, it is one of the first things that I encountered in the early 1930s, for example, and even earlier than that—is one way of defining the eligible population is by some estimate, if I could use that word, of an even less definable word, "Indianness." John Collier, when he was Commissioner of Indian Affairs——

Mr. MURTHA. What is that word?

Dr. RHOADES. "Indianness."

And the question came up at that time, stimulated to a large extent by intermarriage, and even earlier before the end of the last century intermarriage of white men marrying Indian women, ostensibly for the receipt of benefits, in which case a law was passed excluding non-Indian males. The question arises, as reflected partially in results of a survey that we did three years ago, I believe, of why physicians were dissatisfied working in the Indian Health Service?

And I was struck by the number of responses. Not great in number, but intense, saying that "I devoted this portion of my life to providing health care to Indian people, and I do not believe that that is what has been assigned to me when I provide care to individuals who are one-one-thousandth and 48th degree of Indian blood and whose only connection with the Indian community is the fact they are eligible for health care services, and so they show up and exhibit their Indianness that way."

So the question of the degree of Indian blood is not going to go away whether the Indian Health Service addresses it or not. It may be also the central question for Indian people at the present time.

If one considers the economic effects of health care in this country, based upon the three alternatives that I mentioned, what one finds is that all considerations have some degree of obnoxiousness to them. The Indian Health Service would like to provide care to all Indians in this country. We do not wish to exclude anyone from care.

The question is, in fact, we have been rationing care for Indian people since the inception of health care services one way or the other, just as health care has been rationed all the time in this country using other techniques. It became apparent in the 1960s the form of rationing that was provided for the general population resulted in displacement of large numbers of people from care, basically those who could not pay, and this country attempted to redress that and made major gains in that. But rationing is a term that I believe should be used appropriately to describe what is going on.

Let me close these remarks, which obviously could go on for some time, by summarizing what we have been doing in the past is excluding individuals from health care. We all know that. It has been done in a chaotic and a haphazard manner. All that we are seeking to do is to bring some order out of that chaos with a proposal for sharpened eligibility requirements.

Mr. **Murtha**. What impact do you expect on your financial situation? In other words, if these new regulations go into effect, what is the impact financially?

Dr. **Rhoades**. I am not prepared to answer that because we are not anticipating what form the eligibility may take. And depending upon how that is defined would obviously have differing effects. We would expect some effect, no question about that.

Mr. **Murtha**. So you cannot, at this point, make an estimate of how many people will be excluded under a revised regulation or revised definition of who is an Indian?

Dr. **Rhoades**. No, sir. Because it would depend upon the nature of that definition. To pick one, and I don't want to pick it to sound like we are promulgating that, but the one that has been addressed because it is somewhat easier to measure, of course, is the question of degree of Indian blood. The estimates vary, and they are based upon insufficient information.

As I said, our own information system is less than two years old. I believe that there are—and this is my opinion now at the present time—perhaps 10 to 15 percent, in some areas a higher number than that, who are less degree of Indian blood who are currently in this system.

Mr. **Murtha**. So you are predicting 10 to 15 percent who are receiving medical care now would be excluded?

Dr. **Rhoades**. Yes, sir, for purposes of discussion only.

Let me hasten to add that a decision would need to be made—if eligibility criteria are sharpened that result in restriction, and they may not, the criteria could be altered to increase services, but if they are sharpened to restrict people, I would propose individuals who have been in the system and dependent upon our system for some time would not be excluded. They should be grandfathered in so that they are not suddenly dumped from the health care system.

Mr. **Murtha**. So you think this exclusion will be done by definition of who is an Indian?

Dr. **Rhoades**. No, no, I am sorry. I don't mean to imply that at all. The exclusion may be on the basis of living in a certain health provider area defined by county on or near the reservation. I would not venture to predict what the form will take. We want to start with the discussion of that question.

Mr. **Murtha**. All right. Let's say you get a look at the regulations. What are you going to do to measure the impact before you promulgate, before you put the regulations into effect?

Dr. **Rhoades**. We will look very carefully at the information that we have and that we are gathering as to the kinds of people that are utilizing the system at the present time.

Mr. **Murtha**. Of course, the grandfathering in is something you have thought about as a transition period.

Dr **Rhoades**. It certainly hasn't been widely discussed.

Mr. **Murtha**. I understand.

Dr. **Rhoades**. And, in addition, before any such policy change were made, there would be wide public discussion—our intention would be that every tribe would have the opportunity to discuss and respond to proposed changes, and perhaps make other recommendations, and at that time we would expect to be able to estimate the impact.

Mr. **Murtha**. You tell me the new regulations are coming about because of complaints of a few doctors or because of fiscal constraints, or just a need for improvement in the standards?

Dr. **Rhoades**. I would say all three. The purpose of my rather extended remarks was to point out that I believe this is a "universal" problem. This is a fundamental problem. We certainly wouldn't recommend changing something as important as this because a few doctors were unhappy with it. That certainly would be an insufficient reason.

Mr. **Murtha**. What you are saying——

Dr. **Rhoades**. Budget reasons, themselves, are not sufficient either. In my opinion, the definition of the population in this country, recognized by the Federal Government and in fulfillment of certain obligations that have been assumed by the Federal Government, requires that definition, I would say, irrespective of health care even.

RESOURCE ALLOCATION METHODOLOGY

Mr. **Murtha**. IHS has planned to use a new resource allocation methodology beginning in fiscal year 1987 to distribute available funds. Why are you changing the allocation methodology?

Dr. **Rhoades**. I am glad you asked that question, Mr. Murtha. Let me begin by critiquing our own use of the word "reallocation". The word "reallocation" implies something that has not taken place and something that we do not propose to do, at least in the early stages. That is, we are not going to take anything that is out there and redistribute it.

On the other hand, again largely under the impetus of Congress and as a result of certain court actions, and for many historical reasons, it is apparent that there is an inequitable distribution of resources for health care throughout this country. We have made major advances in diminishing that inequity, and at the heart of the correction of that inequity is the way that we allocate our resources. That really is one of the functions of the Director of the Indian Health Service, number one.

Number two, we really are not changing the allocation process that has been underway—I guess it really began with the first year of what was called the equity fund by the Congress, and I don't recall exactly what year that was, but it was about 1980.

It is more accurate to describe the changes that we are proposing for the distribution in a differential way, which is the best way to describe it, of any increases that we may have among the various service units in this country is just simply being refined based upon what we believe is more accurate and more appropriate information that is being gained from the utilization of our information system and so forth.

TRIBAL CONTRACTS

Mr. **Murtha**. What impact will the changes have on tribally contracted operations?

Dr. **Rhoades**. You mean the utilization of modifications in our allocation process?

Mr. **Murtha**. Right.

Dr. **Rhoades**. We believe—first of all, we expect that for the broad array of programs, either direct Indian Health Service programs or operated programs, there will be very little effect. Most programs tend to cluster around a central median, and the differences there will be very minor. The differences will be greater at either end of that. That is, if there are tribes out there now, and there are, that are substantially under-funded, it will have a relatively greater effect of bringing them up to a level faster than it will bring up a tribe which is not quite so deficient.

We do not propose at the present time, although the final decision has not been made on this, to achieve this evenness of distribution by decreasing the funding that certain programs have at the present time dramatically and abruptly, but only again through utilization of this process. Should those tribes that are relatively better funded—and I do not use the word "over-funded" at the moment—but relatively better funded in relationship to the average of the tribes, again it will have a somewhat greater effect.

I do not intend, and I do not believe, that any effect will be disruptive. We are talking about a process, as I say, it has been going on since 1981 and will continue throughout, I believe, all of the future, that will just represent an evening out of this maldistribution of resources.

INDIRECT COSTS

Mr. **Murtha**. Why specifically are you planning not to provide indirect costs in the future?

Dr. **Rhoades**. In the future?

Mr. **Murtha**. Yes.

Dr. **Rhoades**. Let me digress for a moment and come back to that also. I have addressed a variety of terms already that have a large degree of semantic baggage with them that makes it very difficult to deal with, "Indianness" and so on. The other one is the word "reallocation", which means so many different sorts of things.

And in respect to this, this term has similar baggage, and in deriving that preamble, I forgot your question, Mr. Murtha. Would you repeat that please so I can give the semantics of the term? Oh yes, indirect costs.

Mr. **Murtha**. Yes.

Dr. **Rhoades**. The term "indirect costs" is a term that if I could, at the risk of offending a large number of people in this country, and perhaps not totally accurately characterize, but certainly carries a good deal of truth with it, indirect costs were a device that were developed as a way of, for example, underwriting medical education in this country through the use of research grants. It is widely acknowledged that a university would negotiate for what were called indirect costs that were ostensibly to pay for the electricity and all those kinds of things that are utilized in a research grant.

We do not believe that that historic context of the term "indirect costs" is appropriate to describe what is going on in tribal contracts. That is by no means to be interpreted as evidence that Indian Health Service does not believe that there are costs that are required for tribes to operate the programs. We have always said and continue to say that, in fact, there are costs that are incurred by tribes simply as part of the process of taking over and operating programs that are over and above Indian Health Service costs. We believe those are direct costs of doing business and should be approached that way.

Now what effect will our planning methodology have on tribal programs? We believe that in the next few months, after we have completed some pilot projects and continuing analysis ourselves, for the first time in history we will be able to make a fairly accurate determination of what those costs are. It has not been necessary to identify them in the past, and it turns out to be a very complicated and a very difficult task, but part of the process that we are involved in is to identify those more precisely, and I believe the tribes will be much happier.

Mr. **Murtha**. Are they included in this budget as outlined? In other words, you identify $28.6 million as indirect costs, isn't that right?

Dr. **Rhoades**. Yes, sir.

Mr. **Murtha**. And is that amount available in your budget? Have you included the $28.6 million in your budget for indirect costs?

Dr. **Rhoades**. Let me consult with Mr. Roach for a moment.

Yes, sir, $28.6 million is included in the current budget. That number obviously needs to be refined in view of our improving techniques, and we would be happy to provide more information relative to that for the record.

[The information follows:]

There is approximately $18 million for indirect costs in IHS's FY 1987 budget request.

Mr. **Murtha**. What impact does sequestration have?

Dr. **Rhoades**. In general?

Mr. **Murtha**. On these indirect costs.

Dr. **Rhoades**. The one percent reduction in the sequestration will apply to that and will be approximately $30,000.

Mr. **Murtha**. What if the rescissions were approved?

Dr. **Rhoades**. If the rescissions were approved, as in relation to indirect costs? Let me consult Mr. Roach again.

The rescission would result in $2.9 million reduction, approximately.

Mr. **Murtha**. What is the comparable amount you expect to be required in fiscal year 1987?

Dr. **Rhoades**. I think we should provide that for the record after we have completed some of the analysis that is going on at the moment.

[The information follows:]

The IHS is engaged in a special initiative to improve the system that is being used to determine the administrative cost requirements for tribal P.L. 93-638 contractors. We plan to complete the initiative in the very near future with respect to the shortfall in funding of such costs for FY 1986. After this is completed, we expect to use the process to estimate the level of funding required for tribal P.L. 93-638 contractor administrative costs for FY 1987 and will then be able to project the estimated funding needed for such costs.

Mr. **Murtha**. What is the basis for deciding that tribal administrative costs should be no more than 12 percent of program costs and executive direction should be no more than two percent?

Dr. **Rhoades**. That is an arbitrary figure. Let me back up, it is not a totally arbitrary figure, it is a figure that has been based on experience that has been derived from similar kinds of programs in this country that have a longer experience than we do in addressing these. That is a working figure. We are using that as a basis to explore what it really should be.

Mr. **Murtha**. So you obviously, then, will continue to negotiate with individual contractors on these amounts?

Dr. **Rhoades**. Yes, sir. And in none of this process do we expect to have a dramatic, if any, effect in the remainder of 1986.

Mr. **Murtha**. Is it possible setting these limits might lead to retrocession of contracts?

Dr. **Rhoades**. I wouldn't call these setting limits. What we propose to set is what the actual costs to the tribal contractor is. I don't regard that as a limit.

Assuming that we will accurately describe those costs, and there is no reason why we won't, it will take a lot of work and cooperation from the tribes, I do not believe that the final figure, whatever it is, would result in any retrocession of 638 contracts.

FACILITIES CONSTRUCTION

Mr. **Murtha**. As noted previously, there is no request for facilities construction funding in fiscal year 1987 except for $2,450,000 for modernization and repair projects to be funded from the health services appropriation. Also, almost all the fiscal year 1986 facilities funding added by Congress is proposed for rescission.

The IHS has established a new Office of Environmental Health and Engineering to strengthen and improve the abilities of IHS to plan and implement the IHS facilities program. Will the new office be able to address and correct the problems that have led to the extensive delays in the designing and construction of projects in recent years?

Dr. RHOADES. It would, I believe, impose an unfair burden on that office to give them the responsibility of correcting all of the deficiencies. It is no surprise to this committee that, to share the knowledge that we have, that is, in fact the path from a decision that a new facility of some sort is desirable to actual building of that facility is an extremely tortuous path. Some of the tortuousity of that path is going to remain even though we have a new office.

However, all of those deficiencies that exist within the Indian Health Service, and correctable within headquarters, I expect to be addressed by the creation of that office, and that is specifically why it was created.

Mr. MURTHA. Isn't part of the problem offices outside of IHS?

Dr. RHOADES. In that long tortuous path, there are continuing points: deliberations, discussions, negotiations, and in all of those points that begin actually at an Indian Health Service Unit and a tribe throughout the Indian Health Service, within Indian Health Service and at higher levels in the department as well are points at which people may differ on a number of assumptions and so forth, so the answer is yes, that is a true statement, but it is not the only place where problems occur.

Dr. MARTIN. Could I add to that, please? It is a fair and reasonable statement to say that, independent of the difficulties the IHS itself has, which I think Dr. Rhoades indicated are largely in the process of being corrected, the last two or three years, which I have intimate experience with, have demonstrated severe problems with the two approval levels above IHS.

The budget process is one device. The Indian Health Service also has been forced to deal with an administrative approval system that very frankly has made their work extraordinarily difficult even if they didn't have problems that they are rectifying.

This system has been substantially changed in the last six months. For example, the next level of clearance, the Health Resources and Services Administration has essentially moved out of the process for the most part, and basically the Indian Health Service and the actual engineering staff in OES will be making presentations directly to the Public Health Service.

The changes at the Public Health Service, which we feel and do feel are necessary to simplify the processes, are being undertaken now. The previous process presented an opportunity for detailed nitpicking on 100 different kinds of issues at that level. I think a great deal of that is history. We have reached an understanding with the Assistant Secretary for Health's office to resolve that problem by eliminating that part of the complicated process. So, when the Indian Health Service testifies before Congress, it will not be caught up in that very problematic process.

The second area that we have continuing problems with is the contracting or procurement area. The agency is looking very critically at the complexity of that system as it applies to this process with a keen eye to simplifying it. There are bureaucratic impediments in both those areas that simply must be eliminated in order to make this a more rational process.

Mr. MURTHA. Do you have any plans to update the 1984 priority list for new construction?

Dr. RHOADES. Mr. Murtha, part of the continued attention to improving the entire process for facilities construction includes a revision of the standards and the operating manual for design and construction of hospitals, and we will be continually revising and modifying what has been called the priority list in view of changed circumstances of many, many kinds.

ANCHORAGE HOSPITAL

Mr. MURTHA. None of the top five projects on the previous list, 1981, have yet been completed although all have been provided at least some funds by Congress. What is the current status of the Anchorage, Alaska, hospital for which $2 million was provided for planning and design in 1984?

Dr. RHOADES. The current status of the planning for that facility, which was predicated on a need to consider building a new hospital because the old hospital was sitting precisely on a fault line that is in danger of providing an earthquake, has been made somewhat more complicated than usual because of interest that has been expressed, and which we welcome, from the State of Alaska for the possibility of a shared facility site with the University of Alaska, all of which increases the complexity of the planning process and has a great deal to do with negotiations as to the site of the location of that hospital.

Those discussions and neogtiations are continuing. There are some that took place yesterday, for example.

ROSEBUD HOSPITAL

Mr. MURTHA. The second project was Rosebud, Congress provided $10,304,000 after sequestration in fiscal year 1986 for phase one construction and also included language in the law stating that the Rosebud, South Dakota, Hospital shall be designed and constructed with a capacity of 35 beds. Fiscal year 1986 funds are proposed for rescission, and IHS has indicated it is studying the number of beds issue yet again. What is the current status of this project?

Dr. RHOADES. Let me ask Dr. Martin to answer here.

Following the appearance of the language in the 1986 act, Indian Health Service sought consultation with the department as to changing our process planning at that time to accommodate the additional beds, and that procedure is in place at the present time. We have asked for guidance from the department.

Mr. MURTHA. You are saying the number of beds is resolved?

Dr. RHOADES. No, sir, not as far as I am aware.

Mr. MURTHA. Do you have any idea when construction will begin out there?

Dr. RHOADES. I believe that—assuming that the question is resolved fairly promptly—construction would move ahead fairly rapidly.

Mr. **Murtha**. Will you need any additional funds for this project in this year's budget?

Dr. **Rhoades**. The funds—as you have pointed out—that were appropriated have been proposed for rescission.

Mr. **Murtha**. Let's say it is not agreed to. Will you need additional funds?

Dr. **Rhoades**. Assuming that Congress did not agree with the rescission for fiscal year 1986, we could utilize $10.4 million. We would expect advertisement for bids in March, construction to begin in 1986.

Mr. **Murtha**. So you would not need any additional funds in 1987?

Dr. **Rhoades**. In 1987? The 1987 budget does not contain a request for funds for the Rosebud Hospital.

Mr. **Murtha**. Make sure you follow as the appropriation process goes through. If the rescission is not agreed to, make sure we know before we pass our bill.

Dr. **Martin**. Mr. Murtha, phase one construction for Rosebud could be completed if the Congress rejected the rescission. The technically correct answer is obviously there needs to be phase two construction. The administration's present proposal does not include a request for phase two construction, so the question I think Dr. Rhoades could answer is what is the cost of phase two construction?

Mr. **Murtha**. Do you have that, by chance?

Dr. **Rhoades**. Our estimate at the moment is $6.38 million for phase two.

Mr. **Murtha**. Let's say the rescission is rejected, do you have enough money to carry you through 1987 with the phase one money?

Dr. **Rhoades**. No. Phase one money would not carry us through 1987.

REPORT ON SURGERY

Mr. **Murtha**. When do you expect to submit the report required in the conference report on where to place surgery capability in the Aberdeen area?

Dr. **Rhoades**. That report is in the final stages of completion. It certainly will be submitted before the due date.

WAGNER HEALTH CLINIC

Mr. **Murtha**. The next project on the 1981 list was Wagner, South Dakota. $100,000 was added in 1986 to complete design, and this money is proposed for rescission. Assuming the rescission is not agreed to, when do you expect design to be completed?

Dr. **Rhoades**. If Congress did not approve the proposed rescission, that would make $100,000 available that would be expended in the current fiscal year, 1986.

Mr. **Murtha**. Will you be able to use any construction money in fiscal year 1987 if the rescission is not agreed to?

Dr. **Rhoades**. Based again on all those given assumptions, which may or may not take place, we would not expect that construction, itself, would start in 1987.

PINE RIDGE HOSPITAL

Mr. MURTHA. The fourth project is Pine Ridge, South Dakota. Design funds of $1,360,000 were provided in fiscal year 1984. What is the status of this project?

Dr. RHOADES. Mr. Murtha, the coordinator of our engineering facilities has all that information well summarized. With your permission, I would let him address all those questions.

Mr. PEARSON. Mr. Chairman, we have money from fiscal year 1984 that you have given us, $1.360 million, that we will utilize just as soon as we complete the project's program justification document, which has in fact been finished in the last week, and we are submitting it through channels. We expect that to be approved in March and June of 1986, and we expect this fiscal year to initiate a contract for the planning and design of construction for the Pine Ridge Hospital.

Mr. MURTHA. When will construction funds be needed?

Mr. PEARSON. We anticipate the preparation will take approximately one year from the date of award of the contract. We expect to award the contract about June of 1986. Theoretically, you could start construction any time after probably June or July of 1987, so we would not be ready for construction until probably the last quarter of fiscal year 1987, and, of course, we have no funds, and we have requested no funds for fiscal year 1987 for construction.

Mr. MURTHA. Is any site work money needed in fiscal year 1987?

Mr. PEARSON. We have not requested any, Mr. Chairman. We really won't have the design finished until the last quarter. We probably would be in a position to do some preliminary site work. It would be a very small amount, though.

SACATON HOSPITAL

Mr. MURTHA. The fifth project on the list was Sacaton, Arizona. $4,900,000 was provided in fiscal year 1985 to begin phase one construction. What is the status of that design?

Mr. PEARSON. We directed the Office of Engineering Services two weeks ago to proceed full speed ahead with that project, so it's being advertised as of March 1 in the Commerce Business Daily. We expect to have a contractor and start construction in approximately June.

Mr. MURTHA. Do you need any additional construction money in 1987?

Mr. PEARSON. Mr. Murtha, we have not requested any construction funds for fiscal year 1987. However, considering our progress on the Sacaton project, it is apparent we are going to finish phase one of that project about February of 1987. We have made arrangements in the design of construction, so that what we will end up with is a structural shell that will have a roof on it, to be protected from the elements.

In an effort to avoid the situation where we have a hospital half constructed out there, the Indian Health Service is going to, and we have already started this process, review all of our unobligated facilities dollars and during the next four weeks, identify all of the unobligated dollars we have and request through channels a reprogramming of those dollars to be used for phase two construction of Sacaton.

Mr. **Murtha**. How much money are you talking about?

Mr. **Pearson**. Sir, we are not actually sure yet, but we think in the neighborhood of $8 to $12 million. We may be able to come up with new reprogrammable monies to handle phase two.

OUTPATIENT CLINICS

Mr. **Murtha**. Three outpatient clinics remain to be built from 1985: Kyle, South Dakota; Fort Thompson, South Dakota; and Wolf Point, Montana. Full funding for all three projects has been provided in prior years. What is the status of each of these projects?

Mr. **Pearson**. Mr. Murtha, all three of those projects are in the design stage at the present time. Fort Thompson, we expect to have the design completed by March; Kyle, we expect to have the design finished by approximately January of 1987. The site work is underway. All three projects, as you say, are funded and—one moment. Let me check—we are fully funded on those.

Mr. **Murtha**. You don't need additional funds on any of the three projects?

Mr. **Pearson**. No, sir. We have funds for those.

TOPPENISH HEALTH CLINIC

Mr. **Murtha**. Turning to the 1984 list, the number one outpatient facility is Toppenish, Washington, for which $622,000 was provided for planning design in fiscal year 1986. What is the status of this project?

Mr. **Pearson**. Sir, that is in the same status as the others. We are in the midst of preparing our program justification documents. We virtually finalized that. We expect it to be finalized and presented through channels in March, and we expect to have approval of it by approximately June.

Mr. **Murtha**. Will construction funds be needed in fiscal year 1987 for the Washington project?

Mr. **Pearson**. Sir, that falls in the same category as the others we have discussed from the standpoint we did not officially request any construction funds for fiscal year 1987. Assuming you want, as you have indicated before, to make the assumption you are not going to approve the rescission, you gave us the $622,000 for the planning and the A&E contract, and we could probably initiate that contract sometime after June of 1986. We would be in a position to have completed construction drawings by June of 1987, so that we could be in a position to commence construction by 1987.

Mr. **Murtha**. This is for the Toppenish facility?

Mr. **Pearson**. Yes.

KOTZEBUE HOSPITAL

Mr. **Murtha**. How about Kotzebue, Alaska? Assuming there is no rescission of funds here, when would design work begin, and how long would it take?

Mr. **Pearson**. We would be prepared, Mr. Murtha, to probably have an A&E contract in place in June or July of this fiscal year.

However, that is a much more complicated project and a larger project. It is a full-sized hospital, and it would probably take in the neighborhood of 12 to 16 months to complete the design on that. So, it is unlikely we would be in a position to utilize any construction funds in FY1987.

Mr. **Murtha**. You wouldn't need any construction money this year for that hospital?

Mr. **Pearson**. No, sir.

PARKER, ARIZONA AND SHIPROCK, NEW MEXICO

Mr. **Murtha**. The next two projects in the 1984 list are the Parker OPD, Arizona, outpatient clinic, and the Shiprock, New Mexico hospital. What is the current status of these two projects?

Mr. **Pearson**. Basically at the current time we are preparing the program justification document for Parker. We expect to have that approved through channels probably in June. We will not commence any further on those projects until such time that we have the funding capability to initiate A&E contracts on Parker.

Now the other one you asked about was Shiprock?

Mr. **Murtha**. Right.

Mr. **Pearson**. Shiprock is in basically the same situation. We will have the completed program justification document probably by June. But we will not be in a position to proceed any further until we, in fact, do obtain some sort of planning funds. I might add at this time that in our consideration of the unobligated dollars that we have for the facility, if we have enough to take care of Sacaton, our next priority would probably be to utilize some of these funds to initiate one or two of these planning projects.

Mr. **Murtha**. How much money are you going to need to design both of these?

Mr. **Pearson**. On the Shiprock facility, we have estimated $1.74 million to do the planning for that facility—excuse me, sir, that has been changed to $1.9 million because the statistics have shown that Shiprock is going to require a larger facility.

And the other one you requested was Parker. We estimated $433,000 for planning for Parker.

UNOBLIGATED FUNDS

Mr. **Murtha**. Would you clarify where the unobligated money would specifically come from?

Mr. **Pearson**. Yes, we started this fiscal year, Mr. Murtha, with $39.2 million of unobligated facilities dollars. We are making every effort to make sure that those funds are, in fact, obligated during fiscal year 1986. We intend to end up the year with all those dollars obligated.

We have a couple of projects that we are working on to try to get them totally wrapped up and moving along so we can obligate the funds, and if we cannot effectively obligate the funds on the other existing projects, we are proposing to submit reprogramming through channels to Congress to get congressional permission to utilize those funds toward other uses for our facilities programs.

One of the things that has happened in the past, Mr. Murtha, is that we have been criticized in the Indian Health Service for carrying over a very large unobligated balance. The question has been asked, "Is it that you don't need the money because you seem to be carrying it over without utilizing it?" What we want to do is show you we need the money, we intend to utilize it.

Mr. **Murtha**. We understand that, and it is a complicated thing. In defense, I got through this all the time, "Why do we have such a large unobligated balance?" What you are saying is you are going to take the money from a project which you know cannot be obligated in the near future, and that will be made up at some point with other money. Is that what you are saying?

Mr. **Pearson**. What we are saying is that we are going to evaluate the most critical needs, such as Sacaton, and we can provide for the record a listing of the funds available for reprogramming showing what dollars we have to reprogram and how we would propose that they be utilized.

[The information follows:]

The IHS is currently determining the amount of funds available for reprogramming. Once accomplished, it is expected that a reprogramming request will be forwarded.

PERSONNEL QUARTERS

Mr. **Murtha**. No funds are requested for either sanitation facilities or for personnel quarters. Do you have a priority list for personnel quarters?

Mr. **Pearson**. Sir, we are in the midst of designing a system that will permit us to establish a priority list for quarters. In the past, there has not been a priority list for quarters because quarters basically were requested or accompanied a request for new facilities.

The difficulty with that is that we have some quarters out there that are existing facilities, which need to be replaced, perhaps even more severely than the new quarters for some of our new facilities, so in fiscal year 1986, one of the efforts of the new office will be to establish a quarters priorities system for the Indian Health Service, and we will be more than pleased to provide for the record our progress.

Mr. **Murtha**. Also provide for the record locations which will require quarters in order to allow at least minimal staffing of new or remodeled facilities.

Mr. **Pearson**. Yes.

[The information follows:]

PRIORITY LIST FOR PERSONNEL QUARTERS

[Dollar amounts in thousands]

	Units	
Wolf Point	3	$300
Fort Thompson	13	1,279
Kanakanak	26	4,133
Rosebud	51	4,845
Kyle	17	[1] 105
Total		10,662

[1] Planning and design

The IHS is completing an inventory and utilization survey of all IHS quarters which will also identify deficiences. A list of the needed quarters at existing facilities will be merged with a list of quarters at new facilities to form a single IHS priority list for quarters.

SANITATION FACILITIES

Mr. MURTHA. With regard to sanitation facilities, what is your current estimate as to the number of units, BIA, tribal, other, and related existing, that will require service in fiscal year 1987, and what is the cost?

Mr. PEARSON. We are estimating that there are in the pipeline approximately 5,400 homes that will be constructed during fiscal year 1987, 2,400 of them will be HUD homes, and we have a memorandum of agreement with HUD whereby they authorize the tribes to sell bonds to obtain the dollars to transfer to the Indian Health Service to build the sanitation facilities for those 2,400 homes. So basically, we intend to get the funds for those 2,400 homes from a transfer process. The remaining 3,000 homes we expect to be built during fiscal year 1987; 1,000 BIA and HIP homes, and 2,000 Tribal and other homes.

At this time we have requested no funds in the fiscal year 1987 budget for that, Mr. Murtha. The policy has been that an effort is being made to have the agency that constructs the homes also make arrangements for the sanitation facilities for the homes.

Mr. MURTHA. Do you consider the provision of sanitation facilities as "marginal activity"?

Dr. RHOADES. Let me address that, Mr. Murtha.

There is no question but that in the general consideration of health status of any people, sanitation facilities and so forth are an integral part, perhaps the most important part in actually raising the status of people's health.

On the other hand, the term "marginal", as used, as I understand it, is a relative term used only to compare the immediacy of direct care and the provision of life-saving care to a construction program. It doesn't imply more than that.

CAPITATION

Mr. MURTHA. The President's major policy initiatives book indicates that the administration planned to "replicate cost-saving capitation plans similar to the Pascua-Yaqui health maintenance organization and the Pawnee benefits package" because they cost less per Indian to provide services than IHS direct services. How exactly do you plan to replicate these plans?

Dr. RHOADES. We don't have immediate action plans for replication of those programs. However, the experience that has been gained with the Pascua-Yaqui and Pawnee benefit program would point the way toward any future negotiations for that kind of health care.

PARITY

Mr. MURTHA. The budget justification on page 35 indicates that IHS plans to submit the report in May on what it would cost for IHS to provide service to the Indian population that would provide parity with the U.S. population as a whole. Can you summarize any findings that will be included in this report to the subcommittee at this time?

Dr. **Rhoades**. No, sir. I cannot. That is a very elaborate and large group working on that activity at this moment. Again, this past week they spent a good deal of time developing that. It certainly will be available by May. But it would be premature for me at this moment to speculate about the final findings.

PROGRAM AREA REVIEWS

Mr. **Murtha**. In your highlight statement, on page 41, it indicates you will be performing reviews of six area/program offices in 1986. Have any been performed in prior years, or to date this year?

Dr. **Rhoades**. Yes, sir. I believe two, no, three have been done to date this year. Another one is planned for this year. This is not a new initiative. It has been a longstanding activity of the Indian Health Service. We consider it to be very important for the management of the Indian Health Service.

Mr. **Murtha**. What are the results?

Dr. **Rhoades**. The results are—they vary widely, depending upon the nature of the local office. The kinds of deficiencies and lapses I think would not fit into a pattern. Basically, it is designed to provide a critical outside examination of the experience that takes place in an area, and I would be happy to elaborate upon that, even provide for the record results of some of those.

[Committee note.—The information was provided and being held in committee files.]

Mr. **Murtha**. When will these reviews be completed?

Dr. **Rhoades**. Excuse me one minute. They are continuous on a two-year cycle. I think one remains to be done this year, if you are referring to this year.

HOSPITALS AND CLINICS

Mr. **Murtha**. Let me talk about hospitals. Your request for hospitals and health clinics is $409,614,000, a decrease of $23,984,000 or 5.9 percent from the 1986 appropriation, and a decrease of $19 million from the 1986 sequestered amount. There would be a decrease of 292 FTEs. What is the effect of the proposed funding level on the model diabetes program and the emergency services program, assuming no use of reimbursements to fund these programs?

Dr. **Rhoades**. I do not believe there would be an effect on the model diabetes program. There would be an effect on the emergency medical services to some degree. For example, response times may be lengthened from our standard of 20 minutes response and so forth.

STAFFING FOR NEW FACILITIES

Mr. **Murtha**. I notice you are requesting no funds for staffing newly-opened hospitals or clinics. Why are none opening this year?

Dr. **Rhoades**. The request for no additional staff is for facilities that are replacement facilities, and indeed there is a staff in existence at the facility at present, and they would be utilized in the new facility.

Mr. **Murtha**. What are the minimal staffing requirements and costs to operate the Browning, Montana; Crownpoint, New Mexico; and Kanakanak, Alaska, hospitals in fiscal year 1987. And if you will answer that for the record, what happens if these funds are not provided?

Dr. **Rhoades**. We would be happy to.

[The information follows:]

The IHS is in the process of determining the planned construction completion and opening dates for these facilities and is reviewing the additional staffing and operating costs that will be required for these facilities when they open. The information will be provided to the Committee as soon as the review is completed.

REIMBURSEMENTS

Mr. **Murtha**. Given the current trend of collections from reimbursements, what is the reasonable expectation of the amount that would be available from reimbursements in fiscal year 1987 compared to your estimate of $73,615,000, an increase of $25 million? If you were not authorized to use these reimbursements in violation of the law, as discussed earlier, what will be the impact on the hospitals and clinics program in fiscal year 1987?

Dr. **Martin**. I think that goes back to the previous question you asked us to expand on. If you took the current projected rate of increase, one could anticipate somewhere between $44 million and $50 million. As Dr. Rhoades said, of course, the budget is predicated on an additional eight million dollars as well as a substantial increase in the Medicare and Medicaid dollars collected. We can submit a detailed analysis for the record.

[The information follows:]

The analysis of the history of the Medicare and Medicaid collections over the history of the program is depicted in the following chart. The chart compares the actual collections with the budget plan collections.

Year	Medicare/Medicaid collections	
	actual	Budget plan
1978	$2.1	$20.0
1979	6.6	20.0
1980	11.5	20.0
1981	15.1	20.0
1982	19.4	30.0
1983	25.1	30.0
1984	26.1	40.0
1985	32.9	55.4
1986 estimate	44.0	54.1
1987estimate	54.0	61.1
Total	236.8	350.6

DENTAL SERVICES

Mr. **Murtha**. On page 57, the request for dental services is $25,692,000, a decrease of $187,000 from the 1986 appropriation, but an increase of $72,000 over the 1986 amount after sequestration.

However, this small increase includes a program decrease of over $1 million.

How do you justify this program decrease and resultant decrease in services, given your statement that the prevalence of oral disease is greater among American Indians than in the general population?

Dr. **Rhoades**. The rationale for that decrease is the same as the rationale for all the other programs. It does not really reflect necessarily the severity of the condition in the Indian tribes.

Mr. **Murtha**. Why would they have more dental problems than the general population?

Dr. **Rhoades**. My quick response, and perhaps too facile, but I think undoubtedly true, is that it is a reflection of the socioeconomic standing of Indians relative to the rest of the population in this country as much as anything else. In addition, the water systems clearly are not as adequately fluoridated as many municipal systems in this country, although again, let me hasten to add, dramatic strides have been made.

Mr. **Murtha**. Couldn't cuts like this in the long run cost us more money? I assume you are talking about not only care of somebody that has toothaches and needs fillings and that type of thing, but there must be some money in here for preventive programs, or is there none in here for preventive programs?

Dr. **Rhoades**. The answer is no, there is money for preventive programs contained within the dental program itself, a fairly comprehensive program.

Mr. **Murtha**. If you cut here, really in the long-term, it is going to cost us more money, isn't it? It would seem to me here is one program where it is cost effective, and if we cut back, in the long run, it is going to cost us more money, because preventive medicine, it would seem to me, would be certainly a place to spend it; and if they have more problems than anybody else, it is kind of counterproductive to cut this back, isn't it?

I understand the budget constraints, but I am looking at it priority-wise. It just seems like this would be not a good place to cut back.

Dr. **Rhoades**. Within the general program, we would again make every effort to direct the resources toward the most urgent need, giving attention to the correction of caries and so forth in young children, making every effort to protect them as much as possible.

Mr. **Murtha**. The information we have, there has been a decrease in persons treated of about 62,000 since 1984, and over 2,000 services over the same time period. Who are the people who aren't being treated? Where would those 62,000 people come from?

Dr. **Rhoades**. I would have to provide that for the record, Mr. Murtha, which I would be happy to do.

[The information follows:]

The total projected decrease in dental services over the period FY 1984 to FY 1987 is estimated to be approximately 202,000. The decrease from FY 1984 to FY 1985 occurred in the Aberdeen, Alaska, Bemidji, Billings, California, Nashville and Portland areas. A portion of the decrease from FY 1984 to FY 1985 is due to the increased emphasis, including use of clinical personnel, on community preventive efforts. In addition, we have recently become aware that data from some tribal programs in Alaska were not submitted in a timely fashion to our data system in FY 1985. The FY 1986 and FY 1987 portions of the projected decline are due to the proposed program decreases and the effect of inflation exceeding the available cost increases in the President's Budget. It would be very speculative at this time to predict the distribution of the FY 1986 and FY 1987 projected decreases by Area.

MENTAL HEALTH

Mr. MURTHA. The request for mental health is $11 million, a decrease of over $50,000 from the 1986 appropriation, and an increase of $65,000 over the sequestered amount. What is the status of the Indian children's program?

Dr. RHOADES. We would not expect the Indian children's program to be disproportionately diminished as a result of this activity. We would expect it to continue essentially as is.

Mr. MURTHA. What changes have been made in the program in the last year?

Dr. RHOADES. In the Indian children's program?

Mr. MURTHA. Right.

Dr. RHOADES. I think it would be useful if I provided that for the record.

[The information follows:]

The IHS Office of Mental Health Programs Branch includes both staff assigned to provide program direction and leadership for general service-wide Mental Health issues in IHS, as well as the special program section commonly known as the Indian Children's Program.

Initially positions and dollars were identified in the Mental Health Headquarters budget to form a nucleus planning and consultative staff to address children's issues in mental health, specifically those services identified in P.L. 94-437 relating to residential placement facilities for children. This effort was expanded into an interagency collaborative effort with the Office of Indian Education of the BIA in an attempt to develop a knowledge base for defining the potential clinical responsibilities of IHS in carrying out the specific services defined in P.L. 94-142. Congress subsequently added positions (4) and recurring dollars ($300,000) specifically for this effort. These funds were, and still are carried in the Hospitals and Clinics budget activity.

Due to a divergence of interests in this combined IHS-BIA effort, the program effort has been separated into two distinct sets of activities. The IHS effort has now completed its withdrawal from local direct services provision. Because of the continued BIA concern with the provision of direct services in the Albuquerque and eastern Navajo Areas, this aspect of the program is continuing as a BIA Area activity. The IHS effort is currently engaged in the development of a focus for the mental health and handicapped needs of Indian children on a nationwide basis. It is anticipated that interagency planning efforts integrating the knowledge gained from both efforts will resume this fiscal year.

There has been considerable confusion about the purpose of, and the organizational placement of this effort. The combined use of positions and dollars identified in two budget activities to fund an effort commonly characterized as a "program," which is in reality a planning and consultative section, involved in a interagency activity, has led to considerable confusion as to precisely what these people do and to whom they are accountable. The effort commonly referred to as the Indian Children's Program is a Mental Health Program Branch activity, with the staff of that activity forming a planning and consultative section within the Branch. Positions and support monies used in this effort, in addition to the four (4) positions and $300,000 identified above in the Hospitals and Clinics budget activity, are from Mental Health appropriations and position allocations. Current levels of support will be continued for this activity in FY 1987.

With the new focus of the program effort, ICP staff are developing methodologies for conducting reviews of IHS Areas regarding programs available for children with special needs. Resources from Federal, state, tribal, and private sources will be reviewed in order to assess the nature, availability, and appropriateness of services for handicapped Indian children. The effort is to assist Areas in better utilizing available resources and in developing plans for securing additional resources.

Mr. Murtha. There is a proposed program decrease of $403,000. How much of the decrease is attributed to improved management, and how much to actual loss of service?

Dr. Rhoades. Again, I would wish to provide that for the record.

[The information follows:]

Only a small portion of the decrease of $403,000 (−3.6%) can be attributed to management improvements.

ALCOHOLISM

Mr. Murtha. On page 64, the request for the alcoholism program is $26,263,000, an increase of $1,636,000 over the 1986 appropriation, and an increase of $1,882,000 over the sequestered level. What is the status of the action plan resulting from your program review carried out last year?

Dr. Rhoades. We are in the process of implementing this specific action plan, and it is very extensive. I think it would be most useful to provide that for the record as well.

[Committee Note.—The information was provided and is being held in committee files.]

Mr. Murtha. I wish you would provide for the record an answer to the question regarding prevention of alcoholism because of what I read about the serious nature of the problem, and I certainly agree there should be more money put into the program, but it is obvious to me also in my visits to the Indian reservations that employment, as well as just idle time, is a major part of the alcoholism problem.

[Committee note.—This question is addressed in the questions and answers submitted for the record following hearing.]

MAINTENANCE AND REPAIR

Mr. Murtha. On page 66, the request for maintenance and repair is $12,025,000, an increase of $404,000 over the 1986 appropriation, and $520,000 over the sequestered amount. What is the source of the $2.4 million in special repairs and improvements that will be used to correct high priority BEMAR deficiency items in fiscal year 1986?

Dr. Rhoades. Excuse me just a moment. If I understand the question, it is being proposed as a separate activity in the budget.

Mr. Murtha. You anticipate collecting three million dollars in fiscal year 1987 from quarters rentals, to be used for quarters O&M. Is this the maximum level of collections, or will it increase in future years?

Dr. Rhoades. Again, Mr. Murtha, we are in the midst of a fairly extensive examination of all aspects of that. It would be more appropriate, I believe, and accurate to provide that for the record.

[The information follows:]

The $3 million estimated for personnel quarters collections is not expected to increase significantly in the next four years. All quarters collections will be used in accordance with the law, for the operation and repairs of the quarters.

CONTRACT CARE

Mr. Murtha. On page 72 is a request for contract care which is $138 million, a decrease of $32 million, or 23 percent, from the 1986 appropriation, and a decrease of $30 million from the sequestered level. Because of the built-in increase in costs of $9,952,000, the actual program decrease is $37,818,000. How do you justify a decrease of this magnitude?

Dr. RHOADES. The justification is the same basis for all the programs based on severe budgetary constraints.

Mr. MURTHA. I can see we are going to run into a real problem here with health, dental, and all the other problems they have on the reservations. We always have to set priorities, but I have seen new hospitals and I have seen some old ones, and I have seen good care, and we are taking care of less people.

I would be very interested to see what is happening here. It looks like to me these budget cuts in the long-term are going to cost us, not only in human misery, but more money also because problems will become more severe. How many IHS areas ran out of contract care funds before the end of fiscal year 1985?

Dr. RHOADES. I am not aware offhand of any that ran out of funds prior to the end of 1985.

Mr. MURTHA. Answer that for the record, please.

Dr. RHOADES. Yes.

[The information follows:]

None of the area offices ran out of contract care funds before the end of FY 1985. However, in some cases only emergency care payments were provided throughout the year in order to function within the Contract Health Services allocations.

Mr. MURTHA. How many were on emergency or priority 1 care only for at least half of the year?

Dr. RHOADES. Our entire contract health system, with a few exceptions, operates on an emergency and urgent basis, so they all would be.

Mr. MURTHA. According to the justification, IHS plans to issue a general notice requiring contract providers to accept reimbursement at a level not exceeding the amount allowed by Medicare for similar services. What is the authority for this action?

Dr. MARTIN. The Office of General Counsel has determined it is consistent with the eligibility rules under a contract system. What the proposal will do is, say. if you wish to enter into a contract with the Indian Health Service, these are the cost advisory guidelines. It is contemplated by most procurement regulations and statutory bases—we can provide the Office of the General Counsel's opinion.

[The information follows:]

The General Counsel opinion was rendered at a meeting with IHS officials and, therefore, was oral.

Mr. MURTHA. Is it possible you lose contract care providers as a result?

Dr. MARTIN. Yes, sir. We may lose some individuals who are not comfortable with that rate. Provision has been made in the notice for particular emergency circumstances. In addition, if necessary, there will be additional funds in 1986 to provide transportation to the next provider. It is an issue of competition that is completely comparable to the private sector, and many hospitals are having to decide if they will accept those type rates, or if they will simply lose the business.

Mr. **Murtha**. The table on page 74 shows all costs increasing over the projected 1986 levels. Do these estimates take into account your plan to limit reimbursement levels?

Dr. **Martin**. The proposed notice is now being completed. Concurrent with that, given the information we have on our ICD-9 diagnoses, analysis is underway to make that determination. These numbers do not necessarily reflect the impact. In some cases, we will be reimbursing them at the same level we do now. In order to do that, we have to be able to look at the new rates that have just come out. We are looking at those rates.

The notice will not take effect for 90 to 120 days. We will have an opportunity to submit it for the record.

[The information follows:]

Once the Federal Register notice has taken effect and contracts are renegotiated, the IHS will be able to provide the information. This is expected to take place in the late summer.

Mr. **Murtha**. If you are able to lower the rates, will there be loss of services at the budgeted level?

Dr. **Martin**. If the number of people being served is the same, and if the unit rate for providing service is decreased, it would allow us to provide more of the services which are now being withheld because the services requested are not high enough on the priority list.

URBAN PROGRAM

Mr. **Murtha**. As in previous years, there is no request for the community health representative program or the urban health program. In the case of the urban program, the existence of alternative sources of funding is cited as the main reason for eliminating IHS funding for the program. Isn't it likely the ability to access these other sources of funding will decrease or be lost without the IHS-based funding for the urban projects?

Dr. **Rhoades**. I am not sure that will be the case in every instance, Mr. Murtha. There is some reason to believe a number of the urban programs may be able to generate support irrespective of the Indian Health Service. There is no question that the Indian Health Service funding has provided useful seed money for the urban projects.

Mr. **Murtha**. How many Indians are served in the urban projects?

Dr. **Rhoades**. With your permission, I would like to submit that for the record. We have it all available.

[The information follows:]

Preliminary indications are that over 104,000 Indian people were served by the urban health program in FY 1985.

DIRECT OPERATIONS

Mr. **Murtha**. On page 102, the request for direct operations is $56,195,000, a decrease of $4,188,000 from the 1986 appropriation, and $1,592,000 after sequestration. Forty-one FTEs will be cut in 1986 as a result of sequestration, and 67 more as a result of the 1987 budget request. In addition, 181 FTEs will be cut in 1986 as a result of FTE restriction. What is meant by "FTE restriction"?

Dr. Rhoades. That being a technical question, let me ask Mr. Roach to address it—perhaps more appropriately than I would be able to.

Mr. Roach. Mr. Chairman, the FTE restriction that is contained in this budget is contained in there for budgetary reasons only, and since there is a provision in the Appropriations Act that prohibits personnel ceilings, the Indian Health Service does not have imposed FTE ceilings for operational purposes. This would be for budgetary purposes only.

Mr. Murtha. What kind of activities will be affected?

Dr. Rhoades. Mr. Chairman, we are engaged at this moment in a position-by-position analysis of the entire direct operations, and once that is completed, we would be happy to provide that to the committee.

[The information follows:]

The review of the Direct Operations positions is currently underway. It is anticipated that the review will be completed by May 1, 1986. At that time, a report will be furnished to the Committee.

Mr. Murtha. Last year the base for travel and transportation of things was $2,480,000. This year it is shown as $4,192,000. Would you explain this increase? This is on page 102. Will you provide that for the record?

Dr. Rhoades. Yes, sir.

[The information follows:]

The FY 1986 President's Budget included the base of $2,480,000 for travel and transportation of things for direct operations which did not reflect adjustments related to the FY 1984 actual obligations. The FY 1986 base of $4,192,000 reflects an increase in obligations and takes into account the FY 1984 actual obligations for these categories. The inflationary costs each year are computed based on the President's Budget of the preceding year and do not reflect the final appropriation base.

Mr. Murtha. If there is anything you would like to add, we could come back this afternoon, or we can adjourn the hearing.

Dr. Rhoades. Mr. Murtha, I have learned through long experience that it is not necessary to add anything at a hearing.

Mr. Murtha. Thank you very much. We have questions for the record.

The hearing is now adjourned. The committee adjourns until tomorrow morning. Thank you.

[Questions and answers provided for the record follow:]

ADDITIONAL QUESTIONS SUBMITTED BY THE COMMITTEE

INDIAN TEENAGE SUICIDES

QUESTION: I have read a lot in the papers about the problem of teenage suicides among the Indian population. What are you doing to address this serious problem?

ANSWER: Unfortunately, the occurrence of suicide among American Indian/Alaska Natives is serious and chronic, particularly in the 15-24 year old age group. Periodically, the topic catches the attention of the press and considerable energy is expended in describing how serious the problem is in Indian country, but that public attention soon fades. Our major service delivery concern is with maintaining a consistent level of overall services while more appropriately addressing the chronic high rate of suicide among young Native Americans.

The Mental Health Programs Branch in IHS is currently collaborating with the National Institute of Mental Health to utilize what little scholarly materials are available on Indian suicide to attempt to address the problem in a more realistic manner.

A national training conference, aimed at the front-line providers of mental health care, is scheduled for early April. The training program, also a recommendation from the Health Resources and Services Administration's program review, will address a number of serious mental health issues, including suicide and other forms of violence facing American Indian and Alaska Natives.

QUESTION: I notice in your budget justification (pg. 61) you say it is estimated that mental health problems are associated with more than one-third of the demands made on health facilities for services. Your budget in this area shows a program decrease of $403,000, however, which you estimate will result in a reduction of 17,000 patient contacts. Given your own acknowledgement of the mental health problem and the severe problem of teenage suicide, is this the time to cut back in this area?

ANSWER: The FY 1987 decrease of $403,000 (-3.6%) in the Mental Health program is a result of priorities in the FY 1987 request. Acute clinical care services directed at preserving life will the highest priority.

QUESTION: What do you consider the causes of teenage suicide?

ANSWER: Any opinion as to the cause of the majority of teenage suicides would be pure speculation. Given the high level of Indian unemployment (27.8% as identified in the 1980 Census report, "American Indians, Eskimos, and Aleuts on Identified Reservations and in the Historic Areas of Oklahoma"), we might expect even higher rates than we observe. At the present time, little is known about the level of predictive correlations. Clearly, lack of hope, obvious career dissatisfaction, lack of recreation activities and presence of anomie must be playing a contributory role.

QUESTION: Which of your programs are involved in addressing this problem?

ANSWER: Each of the Area/Program Offices of the IHS has a Mental Health Program(s)/Services Director. This individual consults with other Area programs, Service Units, and where appropriate the Tribal Programs in developing services priorities. Suicide rates vary from location to location and thus the proportion of resources designated for this activity may vary. At the IHS national Mental Health Program level, several specific efforts are underway.

The Mental Health Programs Branch in IHS is currently collaborating with the National Institute of Mental Health to utilize what little scholarly materials are available on Indian suicide to attempt to address the problem in a more realistic manner.

A national training conference, aimed at the front-line providers of mental health care, is scheduled for early April. The training program, also a recommendation from the Health Resources and Services Administration's program review, will address a number of serious mental health issues, including suicide and other forms of violence facing American Indian and Alaska Natives.

SANITATION FACILITIES

QUESTION: Your budget justification talks about the importance of preventive health care and the importance of adequate sanitation facilities in this connection. IHS, however is requesting no funds for the construction of sanitation facilities despite your estimates that some 20% of Indian and Alaska Native homes have no sanitation facilities. How do you justify this?

ANSWER: Indian sanitation facilities construction funding is not requested in the FY 1987 budget because inpatient and outpatient medical care services for Indian people on or near reservations have received a higher priority. Furthermore, the Administration is continuing to encourage the agencies responsible for housing construction to also fund the sanitation facilities construction. For example, it is anticipated that HUD will provide the remaining $38 million of the $65 million committed through FY 1984 for offsite sanitation facilities to HUD sponsored Indian housing units.

ELIGIBILITY FOR SERVICES

QUESTION: What is your policy concerning providing health care to non-Indians? If room is available and a non-Indian patient is willing to pay, would you provide services?

ANSWER: The policy of IHS pertaining to the provision of health services to non-Indians is as follows: 1) provide emergency treatment until the patient is medically stable and can be transferred to a non-IHS hospital; 2) when a non-Indian woman is pregnant with an eligible Indian's child for the duration of her pregnancy through postpartum; 3) when non-Indians are members of an eligible Indian's household if the medical officer in charge

determines that this is necessary to control acute infectious disease or a public health hazard.

The Congress amended the provisions in the Appropriations Act, P.L. 98-146, in FY 1984 to permit IHS facilities to serve non-Indians, at a reasonable charge, where it is determined that to do so would not impair the ability of its facility to meet its responsibilities to the Indian population. It is IHS policy not to utilize this authority unless the tribe or tribes served by the facility in question agree to open the facility to the non-Indian community.

COMMUNITY HEALTH REPRESENTATIVES PROGRAM

QUESTION: According to your budget justification (pg. 53) post-hospitalization or follow-up care is provided through the outpatient care program and the community health representative (CHR) program. As the ranking Republican on the Select Committee on Aging's subcommittee on Health and Long-Term Care, I have been an advocate of increased use of home health care programs as a means of controlling health care costs. Your budget, however, proposes to eliminate the CHR program. Who will then provide the post-hospitalization or follow up care and do you anticipate elimination of the CHR program increasing the need for longer hospital stays and increased costs in the long run?

ANSWER: Post hospitalization or follow-up care would be absorbed within the existing community health professional staff rather than the paraprofessional community health representatives. The elimination of the Community Health Representatives program will not necessarily lead to longer hospital stays and increased costs in the long run.

COST CONTAINMENT

QUESTION: Along this line what are you doing about cost containment? I have noticed throughout your budget justification that built-in increases include the cost of medical equipment and supplies and the costs of health care provided under contracts or grants.

ANSWER: Cost containment is a product that is an ongoing and integral objective of the management of the IHS. Administration and management at all levels are striving to reduce the actual cost of operation. For example, we are presently reviewing our options in developing a system that will reduce the costs of Contract Health Services by adopting a new payment methodology. However, the built-in increases requested in the budget represent the amounts required to permit the purchase of medical care items in the same quantity as in the previous year.

REIMBURSEMENTS

QUESTION: In the Hospital and Health Clinic activity where you assume that program decreases will be partially offset through the use of additional collection of medicare/medicaid and private insurers reimbursements, what will the impact be if, as usual, your estimates on these reimbursements is too optimistic?

ANSWER: If IHS cannot collect the total amount of reimbursements projected in the FY 1987 budget request, IHS will reassess the resources available for clinical services operations and make the necessary adjustments in the level or range of services provided in order to maintain acute clinical care services directed at preserving life.

MENTAL HEALTH

QUESTION: Your budget justification (pg. 61) says that one objective of the mental health program has been to encourage respect for, and sensitivity to, the cultural belief systems and traditional practices as they relate to the mental health of individuals, families, and communities. Have you done any counseling with the Navajo families who are being relocated?

ANSWER: The Indian Health Service has provided mental health services at the Service Unit level to the affected populations. There has been no special program specifically addressing the needs of those being relocated. The IHS did support research on the effect of resettlement that led to a greater sensitivity to the issues on the part of service providers. The Mental Health Branch also provides consultative services to Navajo social workers hired by the tribe to work with Navajo relocatees.

PROPOSED PROGRAM REDUCTIONS

QUESTION: In a number of instances in your budget your estimates of persons to be treated in 1987 is down. Is this a result of budget cut backs or a realistic estimate of health care needs? If the former what happens to those who cannot be treated?

ANSWER: The estimates are a result of priorities in the FY 1987 request. Priority will be given to the most urgent need and every effort will be made to minimize the effect of reducing services.

MENTAL HEALTH

QUESTION: Your budget (pg. 63) again in Mental Health lists travel as a built in increase and as a program decrease. How is this possible?

ANSWER: The FY 1987 request includes $27,000 to provide for the inflationary cost associated with the increased cost of obtaining travel and transportation in the Mental Health Program. Since the Mental Health program includes the provision of services in the Indian community, travel of Mental Health staff throughout the community is a necessary cost and the increase will permit IHS to continue their effort at the same level as FY 1986.

The request for built-in cost increases and a program decrease is made possible since IHS is not reducing the total travel and transportation request in FY 1987 but is merely adjusting the request for specific increases and decreases.

MAINTENANCE AND REPAIR

QUESTION: Your budget (pgs. 67 and 68) refers to the Backlog of Essential Maintenance and Repair totalling over $70 million. How much of this total would you consider health and safety projects?

ANSWER: The Backlog of Essential Maintenance and Repair (BEMAR), as documented in the Facilities Condition Survey Report (computerized Deep Look Data Bank), describes only maintenance and repair items (i.e., replacement plumbing; painting; replacement roofing; replacement flooring, etc.). Health and safety deficiencies, which total over $25 million and are also shown on page 68 of the budget request, are listed in the Facilities Condition Survey Report under Deficiency Codes 01 -Patient Care, 02 - Fire/Life Safety, 03 - Safety, and 04 - Environmental Quality.

QUESTION: Last year your budget estimated a backlog of $64.7 million. This year's estimate is $72.5 million, despite expenditures of $8.5 million in FY 1986. Why is this backlog on the rise? Should we be doing more to address these maintenance problems?

ANSWER: Of the $8.6 million available for maintenance and repair in FY 1985, $2.9 million was spent on Daily Operations and Maintenance; $0.6 million was spent on In-House Repairs; $2.5 million was used for service contracts (preventive maintenance on boilers, chillers, elevators, etc.; ground maintenance; inspect fire suppression systems, etc.) and correction of code deficiencies. Therefore, less than $2.6 million was available to reduce the backlog of $64.7 million.

The amount of BEMAR at IHS facilities is dependent upon funds available for reduction; annual inflation of construction costs and the identification of additional items by the Office of Engineering Services (OES) through Deep Look Surveys and Annual General Inspections. During FY 1985, funds were available for a maximum 4% reduction in the backlog; an annual inflation rate was applied to the Deep Look Data Bank and the OES had an increased capability to perform Deep Look Surveys and Annual General Inspections.

The identification of new BEMAR items each year is normal and is not unusual if the historical backlog can be reduced, thereby reducing the BEMAR to a base level which can be controlled on an annual basis. The IHS is developing a plan to accomplish this task. The IHS has developed guidelines for the prioritization of Repair and Improvement projects, and is in the process of refining the guidelines to allow for a systematic priority reduction of the estimated $105.5 million backlog in deficiency codes 01 - Patient Care, 02 - Fire/Life Safety, 03 - Safety, and 04 - Environmental Quality, 07 - Handicapped, 08 - Energy Management, 11 - BEMAR Structural, 12 - BEMAR Mechanical, 13 - BEMAR Electrical, 14 - BEMAR Utilities, 15 - BEMAR Grounds, 16 - BEMAR Quarters, and 17 - Real Property Installed Equipment from the computerized Facilities Condition Survey Report.

HOSPITAL ACCREDITATION

QUESTION: Your budget (pg. 70) says that surveys conducted by the Joint Commission on Accreditation of Hospitals (JCAH) show that all facilities have at least some deficiencies and that correction of these deficiencies is mandatory if the facilities are to attain and maintain accreditation and/or Medicare certification status. What happens if you lose this certification? Does you budget include sufficient funds to correct all the deficiencies?

ANSWER: If the hospital loses its certification as a Medicare provider, it loses its ability to bill Medicare and Medicaid. The facility will remain decertified until it has corrected its deficiencies and is resurveyed by either JCAH or HCFA. If the facility passes the resurvey, it is again recertified and can begin to bill and collect from Medicare and Medicaid.

The budget does not include all of the funds necessary to correct all of the deficiencies. However, we do not anticipate the loss of accreditation of any hospitals.

SANITATION TRAINING

QUESTION: Your budget (pg. 79) in the sanitation area discusses training activities. I notice in a breakdown of the sessions and attendance that some of the sessions averaged as few as two to six people per session. Could fewer sessions be held with the expectation that attendance would be greater? Do you change your training sessions in light of the interest shown through attendance or lack of attendance?

ANSWER: Training provided by environmental health personnel covers a variety of subjects. Some of the subjects lend themselves to small groups, while others are more appropriate for larger groups. Food handler training might be indicated at one school as a result of inspections conducted at that facility, or it might be an annual training session for all Service Unit or District food handling personnel to maintain safe, hygienic practices. Training in the use and care of individual sanitation facilities usually involves a one on one situation with the homeowner to achieve the best results. Similarly, training of operators of water, sewage and solid waste systems often involves hands-on training which is best suited to individualized training.

PERSONNEL SHORTAGES

QUESTION: Your statement on page 95 of your budget justification says IHS is experiencing shortages in health care personnel. This would seem to be even more reason not to eliminate the CHR program. Could you comment on that?

ANSWER: The community health representatives may be helpful in certain allied health categories but would not be able to replace all the categories of health care personnel.

[illegible]

QUESTION: You require a certain payback period of [illegible] your scholarship recipients. How long are scholarships required to serve? What has been the experience with keeping these people with IHS or serving the reservations?

ANSWER: The payback for the scholarship recipients under the Section 104 Scholarship program is a minimum of two years and a maximum of four years. This will depend upon the number of years the recipient received a Section 104 award. Many of the IHS scholarship recipients are remaining or serving IHS facilities or Indian communities beyond their payback obligation.

TRIBAL MANAGEMENT

QUESTION: Throughout your budget justification there are statements that lead me to believe there is an abandonment or at the least a lesser emphasis on the goals of P.L. 93-638, Indian Self-Determination Act. As an example you are proposing to eliminate the tribal management program. Is the job of training the tribes to manage their health care programs complete? Doesn't the eliminations of this program put the burden back on IHS and couldn't this result in increased costs in the long run?

ANSWER: The job of training tribes in management is not complete.

In an effort to focus scarce Federal resources on maintaining key IHS inpatient and outpatient medical services in FY 1987, no funds were requested for the Tribal Management program. However, the IHS, to the extent of available staff resources, will continue to provide technical assistance when requested by tribes. We do not believe that elimination of this program will result in increased costs.

RESOURCE ALLOCATION METHODOLOGY

QUESTION: Part of the allocation methodology will be to add 90% of tribal contractor's income, and funds from non-IHS resources, as well as carryover, to IHS funds to determine the total amount available, to compare with "resource need." What guidelines will you use in determining when other resources are duplicative of IHS resources, or when they are supplemental or conditional on IHS funding?

ANSWER: The proposed resource allocation methodology does consider all appropriate health care resources available against the resource needs when determining funding adequacy. In FY 1986, a portion of Medicare/Medicaid collections will be counted as available against the resource requirements in allocating additional resources to the IHS Areas. The FY 1986 Pilot Project involving two tribal P.L. 93-638 contractors will also include a portion of Medicare/Medicaid collections in comparing resources available with resource need. However, other non-IHS resources, such as state and local funds, will not be counted as resources available in the Pilot Project in FY 1986 if they clearly provide for services not included in the IHS Resources Requirement Methodology (RRM). A portion of such non-IHS resources will be counted only if they clearly provide for services included in the RRM.

In FY 1987, a portion of non-IHS resources utilized to provide services which are duplicative of the RRM programs; i.e., inpatient care, dental, etc., will be counted as available in determining the funding adequacy. Non-IHS resources utilized to provide services not included in the RRM and/or the existing health care system; i.e., nursing home services, will not be considered as available against the resource requirements. Both the RRM and the tribal contractor's proposal will be utilized to determine if resources are duplicative or supplemental to IHS funding.

QUESTION: Is it possible, as has been suggested to the Committee, that applying this method could result in eliminating all IHS funding for Alaska Natives in the North Slope?

ANSWER: We do not understand the basis for this suggestion. It is unlikely that the application of this resource allocation methodology would result in the elimination of all IHS funding for health services to Alaska Natives on the North Slope. The suggestion seems to imply that this group of Alaska Natives can meet all their health needs with non-IHS funds. This does not seem to us to be reasonable.

QUESTION: Would the changes resulting from applying the methodology be phased in over time, or applied all at once?

ANSWER: Application of the methodology when applied only to new funds or to modest fraction of the existing funding base could be implemented at once. Obviously, the IHS wishes to avoid drastic modifications in current funding levels that could result in disruption of services.

QUESTION: What kind of consultation process has been used in discussing this new methodology with tribes?

ANSWER: The resource allocation methodology is being tested and refined in pilot studies with the cooperation of two major tribal P.L. 93-638 contractors. Also, during March 1986, there will be extensive tribal discussions in this area.

FACILITIES CONSTRUCTION

QUESTION: What about the status of the 3 remaining projects in the top five slots, for both ambulatory care and inpatient care? Will any be ready for design funds in 1987?

ANSWER: The three top unfunded ambulatory care facilities are: 1) Toppenish, Washington; 2) Parker, Arizona; and 3) Fort Hall, Idaho. We have included Toppenish because design funds which were included in the 1986 appropriation have been proposed for rescission. Should funds for Toppenish not be rescinded, then the three top unfunded ambulatory care facilities would include Sallisaw, Oklahoma.

The three top unfunded inpatient care facilities are 1) Kotzebue, Alaska; 2) Shiprock, New Mexico; and 3) Harlem, Montana. Again, we have included Kotzebue, Alaska, because funds which were included in the 1986 appropriation have been proposed for rescission. Should funds for Kotzebue not be rescinded, then the three top unfunded inpatient care facilities would include Ft. Defiance, Arizona.

We are in the midst of preparing program justification documents for all of these facilities for submittal to higher echelons in March of this year. We expect to have approval for the continued planning of these proposed new facilities by approximately June.

We could be in a position to utilize design funds in 1987 for all of these projects.

SANITATION FACILITIES

QUESTION: With regard to sanitation facilities, what is your current estimate as to the number of units (BIA, Tribal, other, and related existing) that will require service in FY 1987? At what cost?

ANSWER: The following table identifies the IHS estimated cost and number of BIA and new or renovated Indian housing units that will require sanitation facilities in FY 1987:

Housing Sponsor	Units	Funds Required ($ in millions)
BIA	1,000	$ 8.0
Tribal/Other	2,000	16.0
Total	3,000	$24.0

QUESTION: What is the current estimate of unmet need for sanitation facilities on Indian reservations?

ANSWER: The unmet need identified at the end of FY 1985 for water supply, sewage disposal, establishment of operation and maintenance organizations, and for solid waste disposal is in excess of $516 million. This unmet need includes facilities for over 22,000 existing Indian homes that have never received sanitation facilities from IHS, and also includes facilities for another 66,000 homes that have received partial or minimal sanitation facilities from IHS previously but now require those facilities to be upgraded.

ALBUQUERQUE HEADQUARTERS FUNCTIONS

QUESTION: On pages 46 and 47 of the budget justification, you show a breakdown of funding by area offices and headquarters. Explain what functions are carried out at Albuquerque Headquarters. Why is this split of headquarters between Washington and Albuquerque necessary?

ANSWER: There are twelve headquarters functions carried out in Albuquerque, New Mexico. The functions are: 1) alcoholism prevention; 2) central diabetes program; 3) data processing center; 4) environmental management; 5) facilities management; 6) property management; 7) supply management; 8) Indian Children's Program, Mental Health Branch; 9) Nursing Education Center for Indians; 10) Nutrition and Dietetics Training Program; 11) Sensory Disabilities Program; and 12) Dental Special Services Branch.

The IHS has always felt its programs should be as close as possible to the Indian people being served. The 12 functions all involve evaluation activities while 5 involve direct services and include training and quality assurance programs involving a substantial number of Indian clients and Indian personnel who are not available in the Washington metropolitan area.

The Albuquerque locale is a lower cost and more central environment to Indian communities throughout the United States making it cost effective to perform these functions in the field rather than the Washington metropolitan area. The Albuquerque locale is a field location that affords the IHS the opportunity to place centralized IHS health delivery and training programs close to the Indian community and thus utilize Indian people in the administration and delivery of the services and training associated with these programs. We believe the benefits of performing these services near the site of health care delivery are readily apparent.

TUCSON FUNCTIONS

QUESTION: Are there any national or headquarters functions still carried out at Tucson? If so, describe them, and the rationale for having them at that location.

ANSWER: The Office of Program Development functions carried out at Tucson, Arizona, are national in scope, but are not really headquarters functions. Those functions are primarily directed at 1) developing and demonstrating methods and techniques for the improved operations and management of the IHS health programs; 2) providing consultation and technical assistance to all operating and management levels of the Indian Health Service and Indian tribes in the design and implementation of health management and service delivery systems; 3) coordinating health research and development activities within the service directed toward improving the health of Indian people; 4) providing or developing appropriate training courses, methods and plans for human resource development; and 5) providing direct or indirect health services for the Papago and Pasqua Yaqui Indian people at IHS Service Units in the Tucson, Arizona, locale.

Some of the activities related to these functions involve the following:

1) developing plans and methods to shift acute care emphasis to more effective and efficient means of dealing with wellness and fitness as well as chronic problems by evaluating the methodologies and designs associated with:

   a) development of facility based and self-care chronic case protocols (e.g., diabetes, hypertension, and mental health);

   b) provision of day care for elderly and chronically mentally ill;

c) design and implementing COPC pilot operations on the west side of the Papago reservation, emphasizing child youth health and development of positive self-esteem in children and youth;

2) development of systems to support the human resources of the IHS delivery and management system by providing:

   a) community and public health course for physicians and other health professionals;

   b) human relations, conflict management and supervision course for physicians and other health professionals;

   c) ambulatory care and clinic management course;

3) operations analysis directed at determining points of intervention in the process of health services delivery in order to improve effectiveness and efficiency by providing evaluation or descriptive analysis of:

   a) P.L. 93-638 and Buy-Indian contracts;

   b) Medical Centers study of current operations and alternatives including the feasibility of additional centers;

   c) IHS Headquarters GAP, Priority and Data Comparison studies.

4) investigative medical research and development involving:

   a) the Clinic exchange program, a method for transferring knowledge developed at Tucson and its clinics to and through the IHS health delivery system;

   b) management of P.L. 94-437 Title II, Research funds;

   c) Emergency Medical System design and implementation support including vehicle and communication systems;

5) providing technical assistance and operational support to IHS-wide data systems and serves as the developmental testing site for projects such as:

   a) conversion of the Patient Care Information System programs to operate on micro-computers and thereby permit creation and manipulation of local health and patient data bases;

   b) technical interface with the Veteran's Administration (VA) to utilize and adapt VA computer based health services information support systems;

   c) text and application of RPMS modules, e.g., pharmacy, lab, etc.; and

d) improved design of Contract Health Services/Management Information System and Third-Party Billing Systems.

The reasons for locating the program development activities at Tucson are: 1) development activities should take place in an environment of patient care and services. The Papago Indian reservation provides such an environment and in addition serves as a laboratory for developing, conducting and implementing research and intervention programs in health services delivery and management that are necessary for effective and efficient administration of IHS programs; 2) the Tucson, Arizona, locale is conducive to recruiting and retaining the physicians, scientists, and other needed experts in research and development that could not be retained in a more isolated locale; 3) Tucson was chosen because facilities were available at no rental cost and a medical school and university library were available close-by; 4) the Papago (Thohono O'Odham) agreed to work with IHS on developmental activities. Since then the Pascua Yaqui have been recognized and also agreed to work in a developmental mode. The one HMO prepaid program in IHS has been developed with and for the Pascua Yaqui Tribe; 5) involvement of the Papago Indian and IHS facilities ensures that research development and training activities are conducted in the context of a normal, typical IHS and tribal operation to assure the relevance and utility of its work; and 6) the question as to whether the functions of the Tucson Program Office are properly a "headquarters" function is definitional only because these functions differ from those in the other 11 Area Offices. They are, in fact, IHS functions that are vital to any large, complex, and dynamic organization. They aren't direct programs; they are "support" programs only in special narrow context; they are of a different (e.g., developmental) nature. As such, they must be specifically free of the infinite diversions, preoccupations, and atmosphere that exists in the "Executive Direction" unit (e.g., "Headquarters East").

INDIAN CHILDREN'S PROGRAM

QUESTION: How much funding support are you providing for the Indian Children's Program in FY 1986? What do you plan to provide for 1987?

ANSWER: The FY 1986 appropriation for the Indian Children's Program is $623,000 with $303,000 in the Hospital and Health Clinics budget activity and $320,000 in the Mental Health budget activity. This amount will be reduced by the 1% sequestration.

The FY 1987 budget for the Indian Children's program will share in an equitable basis any reduction contained in the FY 1987 President's budget.

ALCOHOLISM

QUESTION: How do you plan to accomplish the change in focus for this program you mention on p. 38, to prevention services for youth rather than treatment services for older alcoholics? Will this result in the elimination of some tribal programs? What has been tribal involvement in this effort?

ANSWER: Initially, all alcoholism programs that were funded by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) to the American Indian and Alaska Native communities were directed solely toward the treatment of the acute and chronic adult alcoholics. The funding process for these demonstration projects was competitive and selections were based solely on the merits of the proposals submitted. Subsequent to the transfer of these projects from NIAAA to IHS as required by P.L. 94-437, an agreement was made to transfer all projects intact (funding level and program activity) which were treatment in nature.

The Alcoholism Program Review conducted in FY 1985 was an analytical methodology that focused on all functional activities at all levels of program operation (tribal, Service Unit, Area and Headquarters). The process utilized experts in the field of substance abuse as well as solicitation from tribal and IHS staff. Recommendations generated by the participants at the Plenary Session addressed every aspect of the alcoholism/substance abuse activity. A major concern was that in order to impact the growing problem and equal emphasis while not eliminating treatment, was the need to direct part of the program activity to community prevention and intervention.

It was determined this effort will require a readjustment, rearrangement of resources, as well as an assessment of existing IHS resources. As the Alcoholism Program Branch has operated in the past, all program development initiatives will include tribal participation from each IHS Area.

QUESTION: What is the status of the Warm Springs, Oregon, treatment program? How much money will be provided to this program in FY 1986, and how much is planned for FY 1987?

ANSWER: April 1, 1986, will mark the first full year of operation for the Warm Springs Demonstration Project. Because the current data collection is minimal, the findings are not statistically valid at this time.

Of the $125,000 that was allocated to the Warm Springs Tribe in FY 1985, the FY 1986 allocation will include a 1% reduction (sequestration) for a revised amount of $123,750, and the same amount is included in the FY 1987 request.

QUESTION: What has been learned from this program? Do you plan to use the results?

ANSWER: The community education/prevention based approach and the data resulting from the indigent clients' specialized evaluation system indicates trends that the original purpose and outcomes are being realized. The project is demonstrating an increase in productivity, decreasing people's anti-social behavior, helping stabilize families and improving physical health relationship with others. We do not expect the client evaluation system to be statistically valid for another year or two, recognizing the need for higher numbers. Should the project reveal positive results after a review of data, the IHS will determine its utility and replication to similar community education and prevention activities.

QUESTION: What is the status of the Fetal Alcohol Syndrome research project at the University of Washington? How long does the current project run?

ANSWER: The focus of the Fetal Alcohol Syndrome (FAS) research project was to review the case histories of ten children diagnosed and identified as being afflicted with FAS. Additional work included identifying new cases of children with FAS and Fetal Alcohol Effect (FAE) to increase the size of the sample investigated by the University of Washington research team.

The project, along with the National Fetal Alcohol Syndrome Prevention Project, has revealed basic information necessary to develop techniques for preventing the occurrence of FAS/FAE in Native American and Alaska Native children. The project has also developed new and interesting strategies for working with Indian communities in the implementation of these FAS/FAE prevention strategies. The second phase of the FAS research project concentrates on devising techniques, methods and other counseling strategies necessary for the care and education of children who were diagnosed as having FAS during infancy and who are now adolescents.

The material for the care and training of the adolescent with FAS will emerge in the form of a users manual. This manual will be designed for use by teachers, parents, school counselors, physicians, nurses and other health care providers who are in contact with adolescents diagnosed as having FAS. The manual will be completed and available for review by April 1, 1986. The document will be reviewed by a panel consisting of physicians, nurses and other experts from the Maternal and Child Health Branch of IHS for its utility as a tool for preventing American Indian and Alaska Native mothers who are at risk and those children that may have FAS or FAE.

CAPITATION

QUESTION: How many capitation contracts do you plan to initiate? In what locations?

ANSWER: No capitation contracts are planned at the present time.

CONTRACT CARE

QUESTION: There is an assumption by some that expansion of direct health care activities, i.e., new or expanded IHS hospitals and clinics, decreases the need for contract services. Is this a valid assumption? Why or why not?

ANSWER: This assumption is not necessarily true in all circumstances. For example, improved direct services may be expected to identify otherwise "hidden" maladies which require further evaluation and care through Contract Health Services. On the other hand, there will be a different mix of contract care needs and there will be some contract care that was previously purchased that can now be taken care of by a new or replacement facility. But this will depend on the services that the new facility can provide. The extent that contract care can be reduced is evaluated when a new or expanded facility is proposed.

URBAN PROGRAM

QUESTION: How many Indians are served by the urban projects? How cost effective is this investment of IHS funds?

ANSWER: Preliminary data indicate that over 104,000 urban Indians were served by the 37 urban Indian health projects in FY 1985.

In addition to providing needed core funding for the 37 urban projects, IHS dollars have served as a catalyst in attracting financial and direct care support from other sources.

INDIAN HEALTH MANPOWER

QUESTION: The request for Indian Health Manpower is $5,418,000, a decrease of $1,042,000 from the 1986 appropriation. This will result in funding 40 less preparatory scholarships, and 45 each of the regular scholarships and the externs. What is the basis for these reductions?

ANSWER: This built-in decrease represents the non-recurring costs associated with the scholarship students who will graduate in 1986. Also included is a corresponding decrease in the number of extern assignments.

QUESTION: Given your statement that "IHS is experiencing shortages of the critical health manpower required to effectively provide health services," why are you proposing to fund no new scholarships?

ANSWER: This is a matter of budget limitations. We can support only continuation scholarships and the INMED and MPH programs. It should be noted that the Department is not proposing continuation of most of its other health professions training programs in the face of these budget constraints.

QUESTION: What level of funding would be required to continue funding new students at the current level, while continuing the existing students?

ANSWER: Approximately $7,000,000 would be required to fund new students at the current level, and to continue support for the existing students.

QUESTION: Why are you planning to continue to fund the recruitment programs if you do not plan to fund new scholarships?

ANSWER: These funds are used to provide information, develop interest, and motivate as well as recruit Indians into health careers. When a student learns about the health needs of the Indian people and pursues a health career on his/her own or under other sponsorship, he/she will probably later serve an Indian community.

QUESTION: The budget indicates (p. 98) that you will be reviewing the focus, priorities, and the legislative changes needed to better manage the scholarship program. What has led you to undertake this review? What problems do you think need to be addressed?

ANSWER: The report from the Office of the Inspector General and an internal grants review identified deficiences which causes us to rethink the focus, to revise the priorities of the program and to develop legislative changes to improve the management of the program. Problems relating to waivers, suspensions, and payback are major areas that are being addressed.

QUESTION: What is the timing of such a review?

ANSWER: The review has been completed. Several of the recommendations have been instituted and plans are being developed to implement the other recommendations.

TRIBAL MANAGEMENT

QUESTION: There is no request for the Tribal Management program, funded at $1,988,000 in 1986 ($1,968,000 after sequestration). What are the benefits of this program?

ANSWER: Tribal Management funds support general tribal developmental activities such as health department development, development or improvement of management systems, general health planning, evaluation, training, etc., and other activities designed to improve the capacity of a tribal organization to enter into P.L. 93-638 contracts.

QUESTION: What will be the impact on tribal contracting of health programs if the program is discontinued?

ANSWER: These resources assisted tribes in developing management systems for operating and managing their own health programs. Such activities may be continued by reallocation of resources from lower priority or from non-IHS funds.

DIRECT OPERATIONS

QUESTION: There is an increase of $500,000 for development of the resource and patient management system, which will make $2,500,000 available for this effort in FY 1987. How has the $2,000,000 available in FY 1986 been spent? Provide a breakdown for the record if necessary.

ANSWER: In November, 1985, the IHS forwarded an Agency Procurement Request (APR) to the Department of Health and Human Services requesting a Delegation of Procurement Authority (DPA) for the Resource and Patient Management System (RPMS) computers. On March 6, 1986, the PHS forwarded to the Department and GSA the IHS response to questions raised with regard to the APR. Following Department and GSA review and the issuance of a DPA, the IHS will conduct a competitive procurement to determine the ultimate vendor. Prior to September 30, 1986, the IHS anticipates award of a contract to procure up to 92 multi-user computers and to upgrade up to one-half (57) of the multi-user computers procured in FY 1984. In addition to the procurement of ADP equipment, a portion of the $2,000,000 will be used to support ADP professionals at the Headquarters and Area Office levels of the IHS.

QUESTION: How exactly will the 1987 funds be spent?

ANSWER: The $2,500,000 will be used to procure an additional 92 multi-user computers and to upgrade the remaining 57 multi-user computers procured in FY 1984. This will complete the installation of multi-user computer in all IHS and Tribal/P.L. 93-638 facilities with composite workloads in excess of 1,000 visits (a total of 298 facilities). In addition to the procurement of ADP equipment, a portion of the $2,500,000 will be used to support ADP personnel at the Headquarters and Area Office levels of the IHS.

QUESTION: How much in total has been spent on this project? What are the future estimated costs to complete this effort? How much of the system has been implemented to date?

ANSWER: The IHS has spent $3,135,000 on the RPMS equipment and maintenance to date. The total future estimated costs necessary to complete the RPMS is approximately $21,400,000 for equipment and maintenance. The resources required to support the ADP professionals at the Headquarters and Area Offices will continue and expand as the RPMS applications continue to be implemented. In FY 1984, the IHS procured 114 multi-user computers. This equipment is currently being used to implement the IHS patient registration system, to provide for the local entry of workload data, to pilot test the Veteran's Administration modules (Pharmacy, Laboratory, Admission, Discharge, Transfer and Patient Scheduling) and to develop a pilot cost-accounting system.

QUESTION: This is a program decrease of $3,162,000. What is the basis for this amount? How will it be split between administrative support functions and program direction activities?

ANSWER: The basis for this amount was a projection that savings resulting from improved management of space, travel, consultant services, printing and publications, equipment, supplies, and other overhead would be realized.

The IHS is engaged in a special effort to evaluate those activities that are located in the Area/Program Offices and headquarters which are considered administrative support functions for the purpose of determining the associated cost based on the most current information. These administrative support functions along with other selected functions represent the basic and fundamental elements of the foundation which support the management of the delivery of health service. The IHS is currently unable to distribute this reduction between the two functions, however, recognition of the above commentary would be taken when the reduction is distributed.

QUESTION: Can you be more specific as to the impacts of the proposed reduction, particularly when combined with the FY 1986 reductions?

ANSWER: The reduction will be felt by both program direction and administrative support activities located in the Area/program Offices and headquarters with some functions being affected in a larger degree than others. The IHS is in the process of discussing with managers in the Area/Program Offices, the issue of having to absorb a substantial reduction in FY 1986. Since appropriations for this activity for the past few years reflect this same trend and since the FY 1987 request continues with proposed reductions, the seriousness with which these discussions are being conducted cannot be understated. Since personnel cost represents approximately 80% of the total direct operations budget, a reduction in the level of employment has been realized in the past and will continue in the future. Since the passage of the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177) suggests that reductions will continue in the future, IHS must consider all possible options including the consolidation of some Area/Program Offices or the consolidation of selected functions.

MODERNIZATION AND REPAIR

QUESTION: There is a request of $2,450,000 for facilities for six modernization and repair projects. How were the specific projects chosen that are included in the request? Do any involve life/safety problems or hazardous conditions?

ANSWER: The IHS has developed a system of applied criteria for the prioritization of repair and improvement projects. The system was used for the first time this year to choose the specific projects, but further refinements are necessary and are being developed at this time. The Tuba City, Arizona, project will eliminate $0.6 million of fire and life safety deficiencies.

QUESTION: What is the total backlog of these small modernization and repair projects? Do you have them all catalogued and in priority order? How often is the list updated?

ANSWER: The total backlog of small modernization and repair projects as catalogued on a computerized Facility Deficiency Survey Report, is in excess of $105 million. This Report is updated on a quarterly basis.

A plan is being developed by the IHS to significantly reduce the historical BEMAR to a base level which can be controlled on an annual basis. The IHS has developed guidelines for the prioritization of Repair and Improvement projects, and is in the process of refining the guidelines to allow for a systematic priority reduction of the estimated $105.5 million backlog from the computerized Facilities Condition Survey Report in deficiency codes 01 - Patient Care, 02 - Fire/Life Safety, 03 - Safety, 04 - Environmental Quality, 07 - Handicapped, 08 - Energy Management, 11 - BEMAR Structural, 12 - BEMAR Mechanical, 13 - BEMAR Electrical, 14 - BEMAR Utilities, 15 - BEMAR Grounds, 16 - BEMAR Quarters, and 17 - Real Property Installed Equipment.

QUESTION: How much of the backlog consists of life/safety or hazardous conditions requiring correction?

ANSWER: Approximately $6.0 million of the backlog (deficiency codes 02 - Fire/Life Safety, 03 - Safety) consists of life/safety or hazardous conditions requiring correction.

QUESTION: Are any of the projects included in the request included on a current priority list for major repair or replacement in the near future? If so, what is the justification for performing minor repairs at this time.

ANSWER: None of these projects is included on a current priority list.

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MONDAY, APRIL 14, 1986.

INDIAN EDUCATION

WITNESSES

LAWRENCE F. DAVENPORT, ASSISTANT SECRETARY FOR ELEMENTARY AND SECONDARY EDUCATION

HAKIM KHAN, ACTING DIRECTOR, INDIAN EDUCATION PROGRAMS

SALLY H. CHRISTENSEN, DIRECTOR, BUDGET SERVICE, OFFICE OF PLANNING, BUDGET AND EVALUATION

LAWRENCE L. BROWN, DIRECTOR, DIVISION OF ELEMENTARY, SECONDARY, AND VOCATIONAL ANALYSIS, OFFICE OF PLANNING, BUDGET AND EVALUATION

THOMAS M. CORWIN, SENIOR BUDGET ANALYST/LEGISLATIVE COORDINATOR, DIVISION OF ELEMENTARY, SECONDARY AND VOCATIONAL ANALYSIS, OFFICE OF PLANNING, BUDGET AND EVALUATION

INTRODUCTIONS

Mr. YATES. This is the hearing on the budget for fiscal year 1987 for Indian Education—what are you, a department?

Mr. DAVENPORT. Department of Education.

Mr. YATES. How do you define—Indian Education, what?

Mr. DAVENPORT. Office.

Mr. YATES. Appearing in support of that program is Mr. Khan, the Acting Director of the program; Ms. Christensen, the Director of the Budget Service; Mr. Brown, the Director of the Division of Elementary and Vocational Analysis; and Mr. Corwin, Senior Budget Analyst.

Is Mr. Davenport here?

Mr. DAVENPORT. Here.

Mr. YATES. Mr. Davenport, the Assistant Secretary, whose statement may go into the record at this point. His statement may be followed by the biography of Mr. Brown. Mr. Davenport's biography is on the back of his statement.

Mr. Davenport, you may proceed with your statement.

Mr. DAVENPORT. I will give a summary of the statement.

Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you to discuss the 1987 budget and legislative proposal for the Indian Education Act. The Department of Education and the Department of the Interior.

grams. This request is an increase of $11.5 million over the 1986 budget for Indian education. The budget is based on reallocation of responsibilities for Indian education between the Department of Education and the Department of Interior.

The net effect of our proposal is to keep total funding for affected programs in the two departments approximately level with the 1986 funding level. While the largest portion of the budget request depends on the passage of proposed legislation—specifically the proposal for a new state grant program for Indian children—the remaining portion does not require authorizing legislation because it can be accomplished through appropriations action.

My colleagues and I will be happy to respond to any questions.

[The statement of Mr. Davenport and biographies of Mr. Davenport, Mr. Brown, and Mr. Corwin follow:]

DEPARTMENT OF EDUCATION

Statement by the Assistant Secretary for
Elementary and Secondary Education
on
Indian Education

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you to discuss the 1987 budget and legislative proposal for the Indian Education Act.

The Department of Education is requesting $75.7 million for Indian Education Act programs. This request is an increase of $11.5 million over the 1986 post-sequestration budget for Indian Education. The budget is based on reallocation of responsibilities for Indian education between the Department of Education and the Department of the Interior and supports educational reforms in programs for Indian children. The net effect of our proposal is to keep total funding for affected programs in the two Departments approximately level with the 1986 funding level.

While the largest portion of the budget request depends on passage of proposed legislation — specifically the proposal for a new State grant program for Indian children -- the remaining actions proposed do not require authorizing legislation because they can be accomplished through appropriation action.

Overall Budget Strategy

The FY 1987 Indian Education budget proposes $70,323,000 for a new program of grants to States for Indian children, $2,940,000 for adult education, and $2,466,000 for program administration. The State grant program consolidates our Part A Grants to LEAs program and the Bureau of Indian Affairs' Johnson O'Malley program. The adult education and program administration activities are essentially continued from the current activities. All remaining Indian Education Act programs are either proposed for transfer to the Bureau of Indian Affairs or are phased out and their funds redistributed to the proposed State grant program.

Grants for Indian Children in Public Schools

We request $70,323,000 for the new program of grants to States for Indian children in public schools. This is approximately the same amount as was appropriated in 1986 for the Part A Grants to LEAs program, the Johnson-O'Malley program, and the Part B resource centers and educational personnel development programs.

The reasons for proposing this new program include the need to (1) reduce overlap and duplication between the current major programs for Indian children in public schools (the Department's Part A Grants to LEAs and BIA's Johnson-O'Malley programs), (2) involve State departments of education more actively in the administration of Indian education, and (3) direct the funds to Indian children who are in greatest need of services.

Both the Part A Grants to LEAs program and the Johnson-O'Malley program provide similar services to overlapping populations. More than 90 percent of Indian children served under BIA's Johnson-O'Malley program are in school districts that also receive Department of Education Part A Grants to LEAs funds. All of the Johnson-O'Malley children are eligible to participate in Part A Grants to LEAs programs. The consolidation of these programs for public school children would eliminate the need in each district for two parent committees, two project directors, and two applications for funding. It would free districts to concentrate on developing the best program for their Indian children, rather than on program coordination and reduction of overlap.

A second objective of our reauthorization proposal is to bring the States more actively into the administration of Indian education programs. The States have taken the lead in improving education across the country. Yet the Department's Indian education formula grant program has always been administered on a direct Federal-to-local basis. Under our proposal, Federal funds would flow to State educational agencies, which would be responsible for assessing local applications for funding and monitoring local programs, as they do in our other major elementary and secondary programs, such as Chapter 1 and Education for the Handicapped.

Because States are closer than the Federal Government to the local communities where programs are actually administered, and because the States have become so active in educational reform, we believe this change in the law would ensure that Indian education is an integral component of the national campaign for educational excellence.

Finally, while the Indian population remains very disadvantaged educationally, there have been significant gains since 1970. Instead of allocating funds to all Indian children regardless of need, the new State grant program will target funds more heavily on Indian children who are educationally disadvantaged.

We anticipate that the 1987 request of $70,323,000 for grants to States will permit funding of projects in some 1,280 local school districts located in 42 States. Approximately 257,000 Indian children will be assisted, at an average Federal cost of $275 per child.

Grants for Indian Children in Indian-Controlled Schools

No funds are requested in the Department of Education budget for the Part A Indian-Controlled Schools program, which primarily funds BIA-contract schools. Instead, the BIA's 1987 budget has been increased by an amount approximately the same as the 1986 Department of Education appropriation for this program.

Because both the Department and the BIA currently provide these schools with funding, the Federal investment in BIA-contract schools is much higher than is the case with BIA-operated schools. Yet the BIA's appropriation is intended to provide full operating support for all its schools, both those it operates and those it contracts to tribes. Thus, Indian children in one type of school have less opportunity for special programs than in others, yet there is little difference in the needs of the children.

Since these schools receive basic support from the BIA, which sets standards for their operation and is responsible for seeing that sufficient funds are provided for effective programs, the Department of Education proposes to divest itself of programs that also provide support to Indian-controlled schools. This will reduce the multiple, uncoordinated sources of funding for the schools, will result in a more equitable distribution of funds for children in BIA-supported schools, and will designate one agency as responsible for providing primary aid and technical assistance to them.

BIA proposes to use the funds for enrichment projects, similar to those currently funded by the Department, but all BIA schools will be eligible to apply for them, not just the BIA-contract schools.

Adult Education

For adult education, the budget includes $2,940,000, an increase of $143,000 over the 1986 post-sequestration level and approximately the same as the 1986 enacted appropriation. Funds would be made available on a competitive basis for projects to enable Indians to acquire basic literacy skills and to complete secondary school or its equivalent. We estimate that the 1987 budget will permit the Department to make approximately 25 to 30 adult education grants for projects serving close to 10,000 Indian adults.

The proposed legislation would continue the current Part C Indian adult education program, although specific funding for planning, pilot, and demonstration projects would be eliminated. Should the new legislation not be approved in time for the 1987 budget, we would propose to use funding provided for adult education under the current Part C authority for educational services programs.

Special Programs for Indian Students

No funds are requested by the Department of Education for the four Part B programs for Indian students. Under our legislative proposal, the authority for Part B Special Programs for Indian Students would be repealed.

For 1987, we have requested no funds for the Part B Indian fellowship program; its funding has been included in the BIA's budget for its fellowship program. The Part B fellowship program is a major area of overlap between the Department and the BIA. Both agencies operate similar fellowship programs, although our program awards funds to undergraduate as well as graduate students and provides funds to students from non-federally recognized as well as federally-recognized Indian tribes. The extensive overlap in the potential applicant pool makes administrative coordination very difficult. The adverse effect of this proposal should be minimal since any Indian students who are unable to obtain BIA fellowships should be able to participate in our regular student assistance programs.

No funds for Part B special programs for Indian children (pilot, planning, and demonstration projects and educational services projects) are requested. These projects duplicate many different programs, but serve a majority of federally-recognized Indian children, including many in the BIA-contract schools. The BIA's budget request has been increased by an amount about the same as the 1986 appropriation for these projects. BIA proposes to consolidate the funds into a program of enrichment grants for all BIA schools, along with the funding from the Part A Indian-Controlled Schools program.

In support of our legislative proposal, the Department has requested no funds for Part B resource and evaluation centers, which provide technical assistance to local applicants and grantees. The State educational agencies would provide technical assistance under our new proposal, so the resource and evaluation centers would not be needed.

Finally, no funding is requested for the Part B educational personnel development programs. States will be able to use some of their funds under the new State grant program for teacher training, and the BIA has included teacher training as one of the eligible activities for its new enrichment program. In addition, the Secretary of Education's teacher training initiative, which has been submitted to Congress as proposed legislation, would set aside funds for BIA teacher training activities as well as provide grants to States for which Indian tribes and organizations would be eligible. Finally, students currently served under the Part B educational personnel development programs are eligible for grants and loans under the Department's regular student assistance programs.

Program Administration

For fiscal year 1987, $2,180,000 is requested to cover the administrative costs of the Office of Indian Education. This is a $173,000 increase over the 1986 post-sequestration level. The Department expects that the current staffing level will be maintained in 1987. The small increase in budget authority requested will be used to meet increased costs for rent, communications, travel, and data processing services.

The National Advisory Council on Indian Education will be continued under the new statute. The 1987 budget request for the Council is $286,000, a $74,000 increase over the 1986 post-sequestration level. The requested increase is to meet rent, communications, and utilities costs which NACIE had not been required to pay in the past and for travel, consultants, printing, and other services. Although some of the Council's current activities such as review of project applications will be eliminated, the Council will continue to be authorized to evaluate and advise the President and the Secretary on any Federal programs in which Indians participate or from which they can benefit.

My colleagues and I will be happy to respond to any questions you may have.

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

Biographical Sketch

NAME : Lawrence F. Davenport

POSITION : Assistant Secretary for Elementary and Secondary Education

BIRTHPLACE AND DATE : Lansing, Michigan, October 13, 1944

EDUCATION : Michigan State University, 1966, B.A.
Michigan State University, 1968, M.A.
Fairleigh Dickinson University, 1975, Ed.D.

EXPERIENCE :

PRESENT : Assistant Secretary for Elementary and Secondary Education

1981 - 1982 : Associate Director for Domestic and Anti-Poverty Operations, ACTION
1979 - 1981 : Provost, San Diego Community College District
1974 - 1979 : President, San Diego Community College Educational Cultural Complex
1972 - 1974 : Vice President for Development, Tuskegee Institute
1972 : Assistant Dean for Special Projects, the University of Michigan-Flint
1969 - 1972 : Director of Special Projects, the University of Michigan-Flint
1968 - 1969 : Assistant Director of Student Activities, Lansing Community College

DEPARTMENT OF EDUCATION

Office of Planning, Budget and Evaluation

Biographical Sketch

NAME : Lawrence L. Brown, III

POSITION : Director, Division of Elementary, Secondary and Vocational Analysis

BIRTHPLACE AND DATE : Cincinnati, Ohio, April 15, 1941

EXPERIENCE

PRESENT : Director, Division of Elementary, Secondary and Vocational Analysis

1980 - 1981 : Director, Division of Technical Support, Office of Planning and Budget, U.S. Department of Education

1979 - 1980 : Director, Education Policy Statistics, Office of the Assistant Secretary for Planning and Evaluation, DHEW

1976 - 1979 : Senior Policy Analyst, Office of the Assistant Secretary for Planning and Evaluation, DHEW

1974 - 1976 : Research Consultant to Assistant Secretary for Planning and Evaluation, Department of Health, Education, and Welfare; Washington Center for Metropolitan Studies; Technassociates, Inc.

1969 - 1974 : Vice President, Director - Data and Program Applications, Data Use and Access Laboratories, Inc. (DUALabs), Arlington, Virginia

1967 - 1969 : Statistician, U.S. Bureau of the Census, Department of Commerce

1965 - 1967 : Graduate Teaching Fellow, Sociology, Anthropology and Demography, University of Cincinnati, Cincinnati, Ohio

EDUCATION : B.A., Sociology, University of Cincinnati;
M.A., Demography, University of Cincinnati, Cincinnati, Ohio

ASSOCIATION MEMBERSHIP : American Statistical Association
Population Association of America
American Educational Finance Association
Federal Statistics Users' Conference

PUBLICATIONS :

Measures of Participation in Vocational Education: Enrollments, Students and Exposure. U.S. Department of Education, Washington, D. C., 1980.

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"Maximizing Access to the Public Use Sample," *Review of Public Data Use*, Vol. 1, No. 1 (December 1972).

** Over 10 Manuals and Technical Reports written.

DEPARTMENT OF EDUCATION

Office of Planning, Budget and Evaluation

Biographical Sketch

NAME : Thomas M. Corwin

POSITION : Senior Budget Analyst/Legislative Coordinator
Division of Elementary, Secondary, and Vocational Analysis

BIRTHPLACE AND DATE : Newark, New Jersey, May 16, 1952

EDUCATION : B.A., Political Science, New College (Sarasota, Florida), 1974
M.P.P. Kennedy School of Government Harvard University, 1976

EXPERIENCE :

1984 - Present: Senior Budget Analyst/Legislative Coordinator, Office of Planning, Budget and Evaluation, U.S. Department of Education

1985 : Director, Task Force on Education, House Republican Research Committee (6-month appointment under the LEGIS Fellows program)

1980 - 1984 : Program Analyst, Office of Planning, Budget and Evaluation, U.S. Department of Education

1978 - 1980 : Staff Associate, American Council on Education

1977 - 1978 : Policy Analyst, American Council on Education

PUBLICATIONS : Author or co-author of nine published monographs and articles

LEGISLATIVE PROPOSAL

Mr. YATES. As I understand it, you are proposing a merger of Indian Affairs and BIA; is that correct?

Mr. DAVENPORT. No, a transfer of some responsibilities between the Department of Education and BIA. For example, we are proposing the fellowship program be administered by the Department of the Interior.

Mr. YATES. What is the status of that legislation that would authorize that?

Ms. CHRISTENSEN. It is just about ready to come up. It should be up here by the end of the month at the latest.

Mr. YATES. Is there a Gramm-Rudman deadline for authorizing committees?

Ms. CHRISTENSEN. No.

Mr. YATES. I know there is for the appropriations bill. The direction is to the legislative committees under the Budget Act to get their work in by a particular time. Nobody meets the deadline anyway. But if you come up—when did you say it was coming up?

Ms. CHRISTENSEN. By the end of the month.

Mr. YATES. End of April or May?

Ms. CHRISTENSEN. End of April.

Mr. YATES. We have to act on this budget before, then.

Mr. Brown.

Mr. BROWN. We are trying to work things out with the Bureau of Indian Affairs, and we have just about completed our negotiations. I think we have one issue remaining. We should be done by the end of this month. We realize the problems with which you are faced insofar as the budget is concerned.

OPERATIONS WITHOUT NEW LEGISLATION

Mr. YATES. Suppose it isn't approved, this budget will be inadequate, won't it?

Mr. BROWN. Some of the proposals in this budget could, in fact, occur without the legislation. One of the things we are requesting, for example, is that the Indian controlled school monies and program be transferred from our Department to BIA and operated along with all of the other BIA programs. The program is for Federally recognized Indians and BIA types of activities.

Mr. YATES. Is it your assumption the money made available will take care of the same number of Indian students and fellowships?

Mr. BROWN. I am sorry?

Mr. YATES. Assuming that the kind of reorganization that you are talking about goes through, is there enough money in this budget to take care of the number of Indian students that you had last year, for example, and the same number of fellowships as you had last year?

Mr. BROWN. If the legislation were passed, there would be enough money for more children but fewer fellowships. However, the fact that there would be fewer fellowships has nothing to do with the transfer request itself.

Mr. YATES. We have the impression that you have to take care of 257,000 children. You say in your justification that you will take care of 244,000 children, so there is a shortfall of children to be taken care of, of something like 13,000.

Mr. Brown. We currently serve 244,000 children in 1986, or 1985. That is about 75 percent of the total number that are eligible for our particular program. If we were to add more money, as we are requesting, for the program, we would be able to support more in the Indian program than we are now. The program would, in fact, increase from about $45.7 million to about——

BUDGET REQUEST WITHOUT LEGISLATIVE CHANGE

Mr. Yates. What cooperation exists in the reorganization bid? Can you give us budgets?

Mr. Brown. Yes. One of the things that could happen is through the appropriations language, you could give BIA the money that normally comes to us for aid to Indian-controlled schools. In addition, we don't want responsibility for some of the other programs, particularly the fellowship program.

Mr. Yates. Suppose we wanted you to have it?

Mr. Brown. Obviously, you have the final word.

Mr. Yates. Suppose we wanted to have it. Could you give us a budget breakdown for the kind of budget we have this year for 1986 with the amounts?

Mr. Brown. Yes. We will have to go back to OMB.

Mr. Yates. It will be very simple for you, won't it?

Mr. Brown. We may be up here for another hearing on the new budget.

[The information follows:]

FY 1987 BUDGET REQUEST UNDER CURRENT LEGISLATION

The Department of Education requested $75,729,000 for Indian Education in FY 1987 based on proposed legislation and the proposed realignment of responsibilities for Indian education programs between the Department of Education and the Bureau of Indian Affairs. The Bureau of Indian Affairs would assume responsibility for programs which aid children in BIA-contract or BIA-operated schools. The Department would assume responsibility for programs for Indian children in public schools.

The proposed legislation would consolidate the Part A Grants to LEAs program and the Bureau of Indian Affairs' Johnson-O'Malley program. Shifts in funding and programs not affected by the legislation were also proposed in line with the intent to clarify overall responsibilities for Indian education.

Basic budget policy was to maintain funding approximately level with FY 1986 but to shift funds between the Departments of Education and Interior to support program changes.

If the proposed legislation is not enacted in time for 1987 funding, the Department of Education's budget request for Indian Education would include funding for the Part A Grants to LEAs program, two Part B programs, and the Part C Adult Education program. It would not include funding for the Part A Indian-Controlled Schools program or two Part B programs. These three programs have been proposed for transfer to the BIA.

The types of activities funded under the Part A Indian-Controlled Schools, Part B Educational Services, and Part B Fellowship programs can be continued by the BIA under its existing legislative authorities. Funding for those activities can and should be included in the BIA's FY 1987 appropriation.

The request for Program Administration funds would not change since the level of operations in 1987 would be the same under either existing or proposed legislation. Significant impact of the proposed legislation on administrative costs would not occur until FY 1988.

The overall amount of funding requested for the affected Departments of Education and Interior programs would be based on the same policy as before -- maintaining funding about level with FY 1986. The Department of Education's budget request for FY 1987 for Indian Education, in the absence of revised legislation, would be $55,546,000.

The following table indicates the distribution of funds among the program components.

DEPARTMENT OF EDUCATION FUNDING REQUEST FOR INDIAN EDUCATION

(Dollars in thousands)

	FY 1987 Request	
Indian Education:	Proposed Legislation	Existing Legislation
1. Grants for Indian children:	1/	
(a) State grants (proposed legislation).	$70,323	---
(b) Payments to local educational agencies and Indian controlled schools (Part A):		
(1) Grants to LEAs..................	---	$45,637
(2) Indian-controlled schools.......	2/	2/
Subtotal..................	70,323	45,637
2. Adult education (Part C)		
(a) Educational services................	2,940	2,940
(b) Planning, pilot, and demonstration projects 3/......................	---	---
Subtotal..................	2,940	2,940
3. Special programs for Indian students (Part B):		
(a) Projects for Indian children........	2/	2/
(b) Fellowships.........................	2/	2/
(c) Educational personnel development...	---	2,262
(d) Resource and evaluation centers.....	---	2,241
Subtotal..................	---	4,503
4. Program Administration:		
(a) Salaries and expenses................	2,180	2,180
(b) National Advisory Committee on Indian Education..................	286	286
Subtotal..................	2,466	2,466
Total..................	$75,729	$55,546

1/ The new State grant program would include funds from the Part A Grants to LEAs program, Johnson-O'Malley program, and the Part B educational personnel development and centers programs.

2/ Funds are included in the BIA's FY 1987 request for the activities supported under this program.

3/ No funds are requested for adult education demonstration activities; instead, funding would be redirected to educational service projects.

Ms. **Christensen**. Mr. Chairman, there is only one item we would not be able to initiate if we did not have this legislation, and that is the conversion of the program from a local education program to a state program.

MERGER WITH JOHNSON-O'MALLEY

Mr. **Yates**. What do you want to do about Johnson-O'Malley? You want to go through the state rather than the local groups, don't you?

Ms. **Christensen**. Yes. We want to merge the two programs.

Mr. **Yates**. Why do you want to do that?

Mr. **Davenport**. There are several reasons we want to do that. One is that the children are in public schools, and we want them to be able to benefit from the excellence movements which have been undertaken in states across this country. We want the states to assist us in monitoring the programs and improving the quality of the programs. Right now we are required to review one-third of the grantees per year, which is 300 reviews. It would add greatly to the services to be extended under this program without the various administrative expenses that occur today.

Mr. **Yates**. Can you reconcile that with the fact Johnson-O'Malley is not a forward-funded program?

Mr. **Brown**. That represents a problem. Inasmuch as Johnson-O'Malley funds will become available this summer——

Mr. **Yates**. Speak up so the reporter can hear you.

Mr. **Brown**. There will be a small gap, we are aware of that.

Mr. **Yates**. What happens to the students caught in the gap?

Mr. **Brown**. I think there is some carryover money from Johnson-O'Malley that could be used. Fiscal year 1986 money could be used from our Part A program to cover that gap. Also, these are both supplementary programs. And I guess if that doesn't work, we are reasonable people and would be willing to consider some technical changes. We would be willing to speed up the grant award process.

Mr. **Yates**. How reasonable is OMB?

Mr. **Brown**. I think they would try to be reasonable on this.

Ms. **Christensen**. I think the important point, though, which Mr. Brown alluded to, was that these are supplementary services only. The basic program operating money that is being provided for the students is ongoing and would not be interrupted. These are just supplementary programs and any gap would be for a very short period.

Mr. **Yates**. Aren't these something the students depend on?

Mr. **Brown**. Not in all instances and not to the extent that the schools and the districts couldn't get by for a few months. Again, I think we would be quite willing to look at our own schedule and try to move up the date when the funds are first awarded.

FY 1988 BUDGET

Mr. **Yates**. When do you prepare your next year's budget?

Ms. **Christensen**. In the next few weeks.

Mr. **Yates**. In view of the fact the legislation is coming up late, shouldn't you start this in FY 1988—we won't have the legislation to base this budget on.

Ms. **Christensen**. We are certainly supporting it as much as we can this year.

Mr. **Yates**. What are you supporting?

Ms. **Christensen**. The legislation this year.

Mr. **Yates**. Yes, but if we don't have legislation——

Ms. **Christensen**. If it happens we are not able to get it, we obviously will take that into account in our budget next year.

CONSULTATION ON LEGISLATIVE PROPOSAL

Mr. **Yates**. Have you had public hearings on this before?

Mr. **Corwin**. We are currently considering doing that. We have had quite a number of Indian groups in to talk to us about it.

Mr. **Yates**. Can you tell us which groups?

Mr. **Corwin**. We can provide it for the record. We had among them the National Indian Education Association, the National Tribal Chairmen's Association, the Navajo Nation, and the National Advisory Council. A number have asked us to go out into the field and let the parents and administrators let us know what they think about the bill. Currently I think we are looking to see if there are funds in the Department to permit us to do that over the summer.

[The information follows:]

Groups Consulted on Legislative Proposal

As of April 22, 1986 the Education Department has held talks with the following: National Indian Education Association, National Tribal Chairmen's Association, Navajo Nation, National Advisory Council on Indian Education, National Congress of American Indians, Director, Montana Indian Education Association, and State directors of Indian Education in 10 States with large Indian populations.

In addition the following general education groups were consulted: Council of Chief State School Officers and National School Boards Association.

DEVELOPMENT OF LEGISLATION

Mr. **Yates**. I thought the opposite procedure would be appropriate, that you would talk to them before you submitted the legislation to the Congress?

Mr. **Brown**. Normally what we do is develop a position.

Mr. **Yates**. Develop a position without having talked to people in the field?

Mr. **Brown**. Talk among ourselves in the government. Again the legislation has not been submitted, as you well know.

Mr. **Yates**. But you are going to talk to them during the summer, he said.

Ms. **Christensen**. We did make some—

Mr. **Yates**. Was that the consensus of the group? Does your position represent the consensus of the group?

Mr. **Brown**. I suspect we will always be at odds with some groups.

Mr. **Yates**. Which groups support this?

Mr. **Brown**. No groups at the moment, sir. They can't support something they don't have.

Mr. **Yates**. Yes, but you know what their position is, and you can tell us whether your legislation will be supported by any of the groups.

Mr. **Brown**. We have made a number of changes that will speak to the kinds of concerns—

Mr. **Yates**. Have you got a copy of the proposal? What you are proposing to do now is, after the changes and filing the bill, you are going to take that bill out to the groups, right?

Mr. **Davenport**. I would state it a different way. We have talked with national groups which represent large numbers of individuals and tribes. And they have voiced their opinions on various components of the draft. Going out to the field would just provide additional input. Recognizing that you are not going to be able to talk to everyone in the field, you talk to the national associations who represent those people.

We have, through our discussions with them, been able to exchange ideas about ways the bill can meet their concerns.

Mr. **Yates**. Aren't you changing the Indian Education Act of 1972? You are, aren't you?

Mr. **Brown**. Yes, sir.

Mr. **Yates**. This is what the National Advisory Council on Indian Education says in their newsletter for February, 1986, that the Indian Education Act of 1972, as amended, should remain intact until there is evidence that any changes in program services and administrative services procedure is justified. You are acting in opposition to their viewpoint, then. Is that a correct statement?

Mr. **Corwin**. We intend to justify any changes on the basis of what would be the best thing for the Indian children.

MERGER WITH JOHNSON-O'MALLEY

Mr. **Yates**. All right. You think it is better for the Indian children to do away with Johnson-O'Malley?

Mr. **Corwin**. If we can come up with something better.

Mr. **Yates**. What is better?

Mr. **Corwin**. The problem we have identified with a separate Part A program and Johnson-O'Malley program is the educational agencies having to put up two applications, two advisory councils, sometimes two administrative apparatuses and so forth. It has occurred to us that both laws basically authorize the same kinds of services. You can do better by the Indian children if you don't have to do everything twice.

Mr. **Yates**. How does that do better for the Indian children?

Mr. **Corwin**. If you have to spend less on administration, you have more resources available for services in the classroom.

Mr. **Yates**. That is true, except you don't provide the money for that. What you are doing is cutting that down, aren't you?

Ms. **Christensen**. No, sir.

Mr. **Davenport**. The Part A program will be given to the states.

Ms. **Christensen**. We have transferred $20 million from BIA.

Mr. **Yates**. This is what, a block grant to the state?

Mr. **Brown**. We wouldn't call it a block grant. There are some strings attached on the way the states could use the money. It would not be money out on the stump to be used in a general way. It will be supplementary money.

One of our goals is to make sure the money is concentrated on the most educationally disadvantaged or economically disadvantaged Indians.

ECONOMICALLY DISADVANTAGED INDIAN CHILDREN

Mr. YATES. How many Indian children are not economically disadvantaged? There aren't very many, are there?

Mr. BROWN. I think it is about 25 percent, 30 percent.

Mr. YATES. That is not—

Mr. BROWN. Thirty percent in poverty.

Mr. YATES. In poverty?

Mr. BROWN. Yes.

Mr. YATES. Is that what you mean by the term?

Mr. BROWN. That is the total population. I don't know how many children that represents.

Mr. YATES. How many of the children are from the wealthy families?

Mr. BROWN. What do you mean, wealthy?

Mr. YATES. Some Indian families own an oil well, for example.

Mr. BROWN. I don't know.

Mr. YATES. I don't know whether they are wealthy any more with prices being what they are.

Mr. BROWN. We can get that for the record.

[The information follows:]

POVERTY AND INCOME DATA ON INDIANS

The 1980 Census reported that 32 percent of Indian children, age 5-17, lived in poverty. This compared to about 10 percent of white children, 29 percent of Hispanic children, 37 percent of black children, and 15 percent overall in poverty.

However, 37 percent of rural Indian children lived in poverty compared to 26 percent of urban Indian children. About 52 percent of all Indian children were in rural areas; about 48 percent were in urban areas.

Indian family income was as follows:

Family income	Percent of children age 3-17	
	Indian	All
Less than $5,000 per year	16	8
Between $5,000 and $20,000 per year	52	40
Between $20,000 and $35,000 per year	25	36
Between $35,000 and $50,000 per year	5	11
Over $50,000 per year	2	5

While many Indian children remain in families which are in poverty or have low incomes, there are also many Indian children, both in urban and rural areas, in middle income families.

Mr. YATES. That would be fine.

The impression we have in testimony before this committee is that if any group in the country is disadvantaged, the Indian people are.

Mr. BROWN. We would not disagree with that statement, nor would we disagree that there is work to be done. We think this vehicle we are proposing will accomplish the needed progress.

ECONOMIC STATUS OF INDIAN CHILDREN

Ms. CHRISTENSEN. Mr. Chairman, according to the 1980 census, the total number of Indian children age five to 17 was almost 500,000. Of that number, almost 130,000 were in poverty according to the Census definition. That is about 25 percent.

Mr. YATES. Whose figures?

Ms. CHRISTENSEN. 1980 census.

Mr. YATES. What is the definition of poverty?

Mr. BROWN. It varies depending upon family size, location, depending on the number of children in the family.

Mr. YATES. That is a strange statistic. I don't quarrel with the Census Bureau on their figures ordinarily, but if only 25 percent of the Indian children are disadvantaged, that differs from testimony that has come before this committee from many sources.

Ms. CHRISTENSEN. It might be helpful if we could find that and put it in the record.

Mr. YATES. The impression one gets from that is everybody else is either middle class or upper middle class, and I don't think that is true.

Ms. CHRISTENSEN. I don't think it means upper middle class.

Mr. BROWN. I don't think that is what it means at all. I would have to look at the numbers to assert that.

Mr. YATES. Should we also take into consideration in legislative changes what the drop-out rate is, how many get into college and how many go to college? Aren't those factors that enter into it?

Mr. BROWN. Yes, sir.

Mr. YATES. Of course, if only 25 percent are disadvantaged, that means the remaining 75 percent of the families have kids that are going to drop out ordinarily, not for financial reasons.

Mr. BROWN. At least for financial reasons. More often dropping out has nothing to do with financial reasons. I think it is important to note that a good deal of progress has been made over the last ten years by the Indian community.

Mr. YATES. That is right, and that has been a result of work of this committee by putting extra money in.

Mr. BROWN. We wouldn't disagree with that.

Mr. YATES. For educating the kids and the rest. That is why we are worried about your new provisions. We think for budgetary reasons you want to cut back.

EDUCATION BUDGET REQUEST

Mr. DAVENPORT. No, sir. There is not a single dime of reduction in this budget.

Mr. BROWN. If that were so, we would have reduced the amount of money.

Mr. YATES. Okay. Gird your loins.

The money that has been made available for Indian education in the Indian education program and in the Bureau of Indian Affairs and in their programs, Johnson-O'Malley School operation, continuing operation and education and enrichment and advancement, those programs are losing $28 million.

Mr. CORWIN. I think the problem is that we are being asked to explain many programs not in our Department. For the programs affected by our legislation, the Title IV programs and JOM, we are coming in at about the 1986 pre-sequestration level. If you look at the Department of Education in totality, you can't say that. We have gone out of our way to protect the Indian education program.

Mr. Yates. That is why we talked about budgetary attacks. Gramm-Rudman is one of the budgetary attacks. You had a sequestration that took it away.

Mr. Corwin. Now we are asking Congress to put it back.

Ms. Christensen. In regard to Gramm-Rudman, for 1987, this is one of our highest priority programs. Even though in total we have cut Department of Education programs by 20 percent from 1985, we have not cut this program. We are maintaining level funding. We have taken decreases out of other programs.

Mr. Davenport. You can't look at the Department of the Interior budget. If the Department of the Interior is doing something here which is unrelated to Johnson-O'Malley and unrelated to the fellowship program you can't say there is a reduction in Education Department funding.

INDIAN FELLOWSHIPS

Mr. Yates. How many scholarships did you have in 1986?

Mr. Davenport. Two-hundred-twenty-one.

Mr. Yates. How many do you propose for 1987?

Mr. Davenport. None. We are proposing that the program be transferred to the Department of Interior.

Mr. Yates. How many did they have in Interior last year? They had 372. How many will they have this year? 350. But you have gotten rid of it, so you don't worry about it, right?

Mr. Brown. Something strange occurred. We don't know why it happened, but we certainly expected that the amount of money would be the same as it was in 1986.

Mr. Yates. Stranger things have happened.

Mr. Brown. We don't know what happened. I suggest a communication problem.

Mr. Yates. All right. The question is, will the Indian children be better off if we keep things as they are than if we go through with your reorganization? I have the impression there will be more funding available if you keep things as they are now with the same number of fellowships, for example. Would you object—if we kept things as they are now, would you have as much money available for the fellowships program?

Mr. Brown. If you kept things as they are now for the fellowship program, yes.

Mr. Yates. You are saying to Interior to take care of the fellowships, you are then going to take that money out of Interior and give it back to yourself. That is all right with you if we do that, is it?

Mr. Brown. No.

Mr. Yates. Why is it not?

Mr. Brown. We would prefer that the money be transferred to BIA.

Mr. Yates. Of course. What if we want to keep it in the Department of Education?

Mr. **Brown**. Then I have no choice.

Mr. **Yates**. All right. Again, you have no choice.

Ms. **Christensen**. Mr. Chairman, we think we have a good proposal that will benefit Indian children.

REACTION TO LEGISLATIVE PROPOSAL

Mr. **Yates**. Where is your proposal? Is it all in here?

Ms. **Christensen**. But the states are doing—

Mr. **Yates**. He says it is not all in here. Why don't you let us take a look at it? Instead of telling us it is going to be wonderful, why don't you let us take a look at it?

Mr. **Brown**. We have been busy consulting.

Ms. **Christensen**. We feel very strongly that the states are responsible for the big reform movements that have been going on now. We want the Indian children to benefit from these movements as other children are doing, and we think the states can do a lot.

Mr. **Yates**. I think that is great. Why aren't the Indian associations coming down in here—

Mr. **Brown**. Change the status quo, and you always shake and rattle people.

Mr. **Yates**. Change the status quo for improvements in their education—

Mr. **Brown**. They are reacting to, I believe, a draft version of a piece of legislation that was unofficial.

Mr. **Yates**. What else have we got to consider? We don't have anything else to consider except the original draft legislation.

Mr. **Brown**. Most of those groups that have complained have discussed matters with us, and we have assured them that as a result of their discussions—

Mr. **Yates**. Okay, I will make a deal with you, Mr. Brown. Give us a copy of the bill you say is making this marvelous transfiguration, and we will submit it to the Indian groups and see their reaction.

Mr. **Brown**. They will scream, but only because—

Mr. **Yates**. This is because it is changed.

Mr. **Brown**. I think so. I think if we have a chance to explain what we are up to—

Mr. **Yates**. Suppose you submit it with explanation?

Mr. **Davenport**. Mr. Chairman, change is always a difficult process for people.

Mr. **Yates**. It is difficult for us, too.

TRIBAL OBJECTIONS

Mr. **Davenport**. I think we have to understand, too, what we are changing. We have begun to talk about what parts of the bill we are concerned with. The Department of the Interior directly funds the Indian tribes. The Indian tribes then subcontract to the school districts. If you are an Indian tribe losing the ability to subcontract, you may be concerned about that.

You cannot convince me that subcontracting improves the education of the Indian child. Since the Indian child's education is maintained by the public school under the Title IV program that we now fund under the Department of Education, all we would propose to do is change the funding pattern from directly funding over 1,100 school districts, to funding the states who would then fund the various school districts. That is a change.

The fact that you are subcontracting to an Indian tribe doesn't mean it has a better effect on education. The public schools are operating the educational system. What I am saying is you have to ask, "why are you against funding through the states?" If you start asking those questions, you get down to, "we used to contract with Interior." But the public schools are providing the education. Each of these organizations that administer these programs has a deterrent, additional administrative costs. This means there are fewer dollars available for Indian children.

Mr. YATES. I suggest you give us a copy of the bill and your explanation of it, and let's take it up with the groups and find out—if, as you say, it works almost a miraculous change in favor of the Indian children, then perhaps we can move forward with it. Fair enough, right?

Mr. DAVENPORT. Yes, sir.

Mr. YATES. All right.

DISCUSSION WITH CONGRESSMEN

Mr. BROWN. We have had, by the way, discussions with Congressmen—

Mr. YATES. Are they in favor of this bill?

Mr. BROWN. They certainly are interested.

Mr. YATES. I am sure they are interested, but are they in favor of it? There is a difference between—

Ms. CHRISTENSEN. They haven't seen the final version.

Mr. YATES. Do they have a copy of this?

Mr. BROWN. No.

Mr. YATES. How do you know then?

Mr. BROWN. We have discussed details of the bill with them.

Mr. YATES. They might come to another conclusion after they read them.

Mr. BROWN. They probably won't agree with every item.

Mr. YATES. Or many of the provisions.

Mr. CORWIN. Dr. Davenport said—

Mr. YATES. See how he hangs on every word?

Mr. CORWIN. Our early draft that went out—well, got out into the field about January—didn't provide for tribal contracting. Several of these groups have come in and said that is very important to them. I think the final version that will come up before the end of the month will be much more satisfactory to them on that issue. I think you will be hearing different things on that than you heard before.

CONTRACT SERVICES

Mr. YATES. Does your new bill include money for the contract services?

Mr. CORWIN. It will permit the states to contract for services.

Mr. YATES. Is that in the budget?

Mr. CORWIN. There is not a line item for the contracting.

Mr. YATES. Shouldn't there be?

Mr. CORWIN. Not the way the draft bill is currently set up.

Mr. YATES. That is part of the opposition, isn't it? The fact that you don't have a line item for contract support?

Mr. CORWIN. No, we haven't been told that is a problem.

ELIGIBLE INDIAN CHILDREN

Mr. YATES. In last year's hearing, we asked the department if the total number of Indian children eligible for Indian education had changed. Your response to the committee was, "We are studying that." Has your study been completed? This statement is made on page 244 of the hearings in part 9 of last year's hearings volumes.

This is what Mr. Yates said in the discussion"Numbers of Indian children"—Ms. Christensen, you and I were at each other last year during last year's budeet hearing, the budget request tm OMB. Let's read from the record. Mr. Davenport, you come in for some of this, too.

FISCAL YEAR 1986 HEARING

"In other words"—Mr. Yates is saying this—"the constraints of OMB are such that you can't provide the money these kids need and you hope the states will provide that necessary over the budget request?"

Mr. Davenport says, "No, sir. We believe that the budget request that we have made is sufficient to cover the needs of the students to be served. If you take a look at the 1984 figure, we served approximately 321,000 students at about $144.40 per student in Part A alone. In 1985, our appropriation level would support the same number of students, at a per student cost of $142.68." That is lower. "This is a reduction of only $1.78 per student. I believe you would agree that won't damage the program."

Mr. Yates says, "On the contrary, I look at your request and you asked for $51,350,000 and OMB said, 'No, we are going to cut you back to $50,323,000'." So you have lost $1 million there. "Apparently you thought that $50 million wasn't enough for these kinds," at least you asked the OMB for it. "You thought—and I am sure that when you submitted the figure of $51,350,000, OMB had told you, 'We are going to give you budget constraints. You better give us the minimum.' Isn't that correct?"

Mr. Davenport then says "The budget process is one of negotiations on both sides, from the Department and the OMB. It is a joint decision in the end as to how much each program will be appropriated."

At any rate, Mr. Yates goes on, "Right. So that when OMB tells you, 'We don't have money for these programs this year. Give us your bottom line,' and you give them $51 million and they tell you, 'That is not bottom enough' "——.

Ms. Christensen comes in, "I would like to correct that for the record. The request that we submitted to OMB was based at that time on a predicted appropriation, what we thought Congress would appropriate. After that time, there was a two percent cut across the board from this particular appropriation. . ." I remember that well, because I had to give into the Senate on it in order to get a bill. Ms Christensen finishes, "and we went back to OMB and amended our request.

Mr. Yates asked, "To increase it?"

"Ms. Christensen. No, to reflect the appropriation being level funded. So it was a joint decision between us and OMB."

It is always a joint decision except OMB makes the joint decision, right?

"Mr. Yates. What happened actually in the conference where we had the two percent was that we were told by the White House that we would have a veto of the bill unless we cut all the programs two percent, and I hated like the devil to agree to a two percent cut on this education program and on the Indian health program and the Indian welfare programs, but this was the bludgeon that the White House held over our heads and so in order to get a billion dollars, we had to consent to the two percent cut.

But we are not bound by the two percent cut in this bill. We are bound only by the question as to what the Indian children need and the fact that we were compelled to provide a lesser amount than they thought they needed last year doesn't mean that we have to provide a lesser amount this year." You may have to, but we don't have to do it, right? "What you are doing is taking that figure and cutting it even more. I think that is grossly unfair, don't you?"

And Ms. Christensen says, "No. I think we came up with a budget that was basically fair." Ms. Christensen, you said not "fair" but "basically fair." "The President had to decide, weighing a lot of different considerations within the overall constraints of the deficit." That is true.

"Mr. Yates. Let me ask you a question."

Ms. Christensen says. "We think we did a good job."

Mr. Yates asks, "Why then did you ask for a total for Indian Education of $69,086,000 when the amount that the conferees had agreed upon was $68,780,000?"

And Ms. Christensen says, "Because it was done before the conference acted."

And Mr. Yates said, "I thought you went back though."

Ms. Christensen said, "I think you are looking at the original submission to OMB of September 15th. At that time, we did not anticipate a two percent cut."

Nobody did, Ms. Christensen. Then we go on to numbers of Indian children. Isn't this fascinating?

"Mr. Yates. I think probably we could pull this and push this back and forth a number of times. The fact remains I think that you and I both know that the amount you are asking for isn't adequate—" Right?

Mr. **Davenport**. No, sir.

Mr. **Yates**. "Mr. Yates. Based on what Mr. Davenport says, that you have the same lumber of children that you had last year, and I would be willing to bet, Mr. Davenport, I will bet you a half a dollar that there are more Indian children out there this year than there were last year needing those funds.

Would you like to take my bet?"

And Mr. Davenport says, "We are studying that." Now, have you finished the study?

NUMBERS OF CHILDREN SERVED

Mr. **Davenport**. No, I didn't mean——

Mr. **Yates**. I finally got around to the question.

Mr. **Davenport**. I didn't mean an actual study. I was talking about getting the data——

Mr. **Yates**. You should have, shouldn't you?

Mr. **Davenport**. Later on in the year, we asked them to give us a more definitive number of students they are going to serve, and it ended up that 300 and some odd thousand of students were served, that year. That is the number in LEAs. That tells me the number of students with a need for the program out in the field.

Keep in mind that Indian children, even though we give Part A assistance, are also eligible for compensatory assistance——

REDUCTION IN CHAPTER 1 FUNDS

Mr. **Yates**. Which has been cut.

Mr. **Davenport**. No, sir, in my prepared——

Mr. **Yates**. According to what Mr. Natcher told me, there was a proposed rescission.

Mr. **Davenport**. There were some changes—not on chapter 1. It was only in terms of migrant——

Mr. **Yates**. Sure there was.

Mr. **Brown**. No chapter 1, sir.

Mr. **Davenport**. In Chapter 1 we are asking for $61 million additional dollars over the original 1986 appropriation to go to the LEAs, which will allow us to serve more children. In Indian Education we do know we have increased the number of schools being served by 15, and that our estimated count this year is over 300,000. Later on this spring we will have a more accurate count. The data come from the LEAs and since these are their figures, we will say we are really serving all those who need services out in the field. It is more than a fair budget.

CONTINUATION OF 1986 TESTIMONY

Mr. **Yates**. Let's continue with this fascinating cross-examination by Mr. Yates last year.

"Mr. Yates. Do you happen to know what the number of students to be served was over the past five years?

"Mr. Ryan." Is Mr. Ryan here?

Mr. **Davenport**. He is now working at the Department of the Interior.

Mr. **Yates**. Mr. Ryan says, "Based upon the 1980 Census"—is that what you used, Ms. Christensen? We are six years past that, aren't we? "Based upon the 1980 Census, there were—of the elementary and secondary school-aged children—about 396,000 children.

"Mr. Yates. And you were talking about 100,000.

"Mr. Davenport. No, sir; the Part A program will serve 321,320.

"Mr. Yates. 321,320; 321,800 or 321,320?

"Mr. Davenport. 321,320.

"Mr. Yates. How much did you say the census was?

"Mr. Ryan. The census total was 75,000 higher", higher than the figure Mr. Davenport used.

"Mr. Yates. If that is census, is that why you delete it by 75,000?"

Mr. Ryan says, "It is not a deletion. It is a difference in accounting where the students are going to school. Some of them are in Bureau of Indian Affairs schools. Some are in religious sectarian schools and other kinds of schools.

"Mr. Yates. Let me ask you a question. Why did you use the census? Do you not know what the actual attendance at the schools is?

"Mr. Ryan. We know what the total number of students for the Part A program is. You asked for a population figure.

"Mr. Yates. Let's talk about your actual count. Mr. Davenport is talking 321,320. Is that the actual count?

"Mr. Ryan. Yes.

"Mr. Davenport. Public schools and BIA contract schools.

"Mr. Yates. As of what date?

"Mr. Davenport. That is 1984 actual.

"Mr. Yates. Is that right? That is 321,320 for the 1984 actual, then you project 321,800, do you not?

"Mr. Davenport. Yes."

So Mr. Yates says "So that is another 500,000 kids or $100,000—500 kids. And with an increase of 500 kids we are giving them a reduction of money."

You have more kids and giving less money. You said, "That is about $1.72 per child."

Mr. Yates says, "A dollar, seventy-two per kid. Why do you have figures of $144?"

And then Mr. Davenport goes on—well, it is all in the record. I think we will have to go through all this again and will probably wind up giving them as much money as we think they need, and it is more money than you think they need, because we think they deserve as good an education as the other kids in the country.

EXPLANATION OF CHILD COUNT

Mr. **Davenport**. Mr. Chairman, if I may, let me try it a different way. The data come from—

Mr. **Yates**. I am very tough to convince.

Mr. **Davenport**. The data and numbers come from the LEAs serving the Indian children. Last year, for example, when I first talked to you, I said 321,320. Then a projected increase to 321,800. That is why I said to you these are estimates until we get actual figures. It ended up 329,498.

Mr. **Yates**. Three—the figure you used was?

Mr. **Davenport**. 321,800.

Mr. **Yates**. So you had an extra how many kids? Seventy-six hundred kids.

Mr. **Davenport**. Yes.

Mr. **Yates**. With less money to take care of them, right? You had money allocated on the basis of 321,000 kids?

Mr. **Davenport**. No, we estimate on the amount of money that is going to be out there and that ended up pretty much what I said to you last year.

Mr. **Yates**. You ended up with more money because we put more money in your budget, but the estimate you gave us was for money for 321,000 kids rather than 329,000 right? The actual was 329.

Mr. **Davenport**. Yes.

Mr. **Yates**. We put the money in to take care of all the kids that you didn't ask for. I think what is going to happen this year is we are going to put the money in again this year to take care of all the kids because you don't ask for it. We have bantered this around for about an hour-and-a-half now on one question only.

I think what I am going to ask you to do is answer questions for the record, and then we are going to take a look at figures and then come back to you if we need more information. In the meantime, I have a hunch we are not going to approve your reorganization because I have the impression you are trying to save money at the expense of the kids, and I don't think our committee is going to let you do that.

Just as happened last year, we had to put more money in, right?

Ms. **Christensen**. I would ask that you look at—

Mr. **Yates**. I have asked you for your bill, I have asked you for your rationale, I have asked you for your best estimates of the number of kids. We will try to provide the amount of money that is necessary. If it is the amount that you want, which I think is low, we will put that in—we will act on what we think is best for the kids, and we know you want us to do that, too.

Ms. **Christensen**. We certainly do.

Mr. **Yates**. You would be on our side if it weren't for the constraints of the budget and OMB.

Ms. **Christensen**. The budget constraints have nothing to do with our legislative proposal, which is to improve these services for the children.

Mr. **Yates**. I will look at your legislative proposal, I will discuss it with Mr. Kildee, and I will try to give it in that very happy phrase, the all-court press.

Mr. **Davenport**. We would be pleased to come up and meet with you and your staff.

Mr. **Yates**. Mr. Davenport, we may do that. We are going to review the bidding last year, and we will review it this year as well.

[The questions for the record follow:]

QUESTIONS SUBMITTED FOR THE RECORD

HOUSE APPROPRIATIONS SUBCOMMITTEE ON INTERIOR AND RELATED AGENCIES

U.S. DEPARTMENT OF EDUCATION

INDIAN EDUCATION

PROBLEMS CAUSED BY CURRENT PROGRAMS FOR INDIAN EDUCATION

Question: Discuss the basis for the statement that current Department of Education and Department of Interior Indian education programs "severely impede rational and efficient use of federal funding for Indian education."

Answer: Our remarks were addressed to the current program structure and division of program responsibilities between the Department of Education and the Bureau of Indian Affairs. Under the current system both agencies fund similar programs serving overlapping populations.

The Department of Education's Part A Grants to LEAs program and the Bureau of Indian Affairs' Johnson-O'Malley program both provide supplementary educational services to Indian children enrolled in public schools. More than 90 percent of the children who receive Johnson-O'Malley services are in districts that receive Part A Grants to LEAs funding as well. This arrangement leads to administrative duplication and excessive administrative costs and hampers the planning and operation of coherant, cost-effective local programs.

The Indian School Equalization Program funded by the BIA provides basic support to BIA-contract schools and to BIA-operated schools. The Department of Education provides funding for supplementary programs to many of the BIA-contract schools under several programs. Costs in these schools are consequently extremely high, but the schools do not, as a group, demonstrate corresponding high student achievement levels. Also, disadvantaged Indian children in BIA-operated schools are not able to participate in the supplementary programs because of limitations in current legislation.

The BIA and the Department of Education operate similar post-secondary fellowship programs. There are some differences, primarily that the Department's eligible population includes members of non-federally recognized tribes. The BIA program currently makes awards to graduate students who are members of federally-recognized tribes. Notwithstanding the differences, the existence of two programs requires considerable coordination. Also, within the Department of Education are several very large student aid programs for which many of the students are fully eligible.

The Department of Education has proposed new legislation and transfers of funding authority to the Bureau of Indian Affairs in

FY 1987 to remedy these problems. No decreases in funding are proposed for the programs involved in the transfer or for consolidation through legislation.

ESTIMATED SAVINGS

Question: Discuss in detail the dollar savings in FY 1987 from the "improve(d) management of the programs for Indian children by reducing duplication and excess administrative costs" in this proposed legislation.

Answer: The Department does not have detailed information required to identify the exact dollars to be saved. However, in 1985 there were 558 districts which received funding from both the Johnson-O'Malley and Part A Grants to LEAs programs. This meant that each of these districts had to fill out two separate applications and probably funded two project directors. In many instances, this would involve two separate advisory committees. All of these duplicate administrative activities entailed some use of time and money. By merging the two programs, administrative costs could be reduced, and the funds recovered could be used for direct services to the children.

EXEMPTION FROM GRAMM-RUDMAN-HOLLINGS

Question: On March 6-7, 1986, the Committee received testimony from outside witness on Indian programs. Many of the witnesses suggested that the Indian education programs be exempted from the Gramm-Rudman-Hollings reductions. What is the Department's position on this?

Answer: The Congress in enacting the Gramm-Rudman-Hollings legislation was very specific about which programs would be exempted. The Administration has proposed no exemptions for Department of Education programs and is not requesting supplemental funding in FY 1986 for Indian education. For one year, Indian education programs will join with many other Federal programs in the effort to reduce the Federal deficit and create better economic conditions for everyone. However, in its FY 1987 budget, the Department has proposed larger decreases for some programs so that others can be funded at the same or higher level than in 1986. Funding for the Indian Education program is restored to the FY 1986 pre-sequester level in our FY 1987 request. This reflects the priority the Administration places on well-designed and non-overlapping programs for Indians.

FUNDS BENEFITING INDIANS

Question: Provide for the record an updated estimate for FY 1987 of the education funds benefitting the Indians.

Answer: Table 1 displays Department of Education funds benefiting Indians for FY 1985 actual and FY 1986 and FY 1987 estimates.

TABLE 1

ESTIMATE OF EDUCATION FUNDS
BENEFITING INDIANS
(Dollars in millions)

I. Programs Specifically Targeted to Indians

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
Indian Education Act Grants to LEAs, Indian tribes and organizations, Indian-controlled schools, and individuals to address the special educational and culturally-related academic needs of Indian children and adults. In 1987, new legislation is proposed to change this program to one of State rather than local awards.	244,000	$65.0	244,000	$61.9	$73.3
Impact Aid - Maintenance and Operations To compensate school districts for the cost of educating children who reside on Indian lands.	95,000	190.1	98,700	193.5	208.3

421

I. Programs Specifically Targeted to Indians -- Continued

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
Impact Aid - Construction Direct grants for the construction or repair of urgently needed school facilities.	N/A	$8.5	N/A	$7.5	$5.0
Chapter 1 - BIA Set-aside Direct transfer of ED funds to the BIA for use at BIA operated and contract schools. Provided compensatory education services to disadvantaged children.	22,232	23.2	22,000	22.2	23.2
Library Services for Indian Tribes Direct grants to Indian tribes for the development or establishment of tribal library programs.	N/A	1.8	N/A	1.3	---
Vocational Education Of the appropriation for vocational education basic grants, 1.25% is reserved by the Department for competitive grants to Indian tribes and tribal organizations.	2,500	9.9	2,000	7.4	4.9

I. Programs Specifically Targeted to Indians -- Continued

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
Rehabilitation Services Service grants to Indian tribes to provide vocational rehabilitation services to handicapped American Indians living on reservations.	750	$1.4	500	$0.7	$0.7
Science and Mathematics Education, Title II EESA Set aside of .5% of the total appropriaton supports programs for children attending elementary and secondary schools for Indian children operated by the Department of Interior.	4,160	0.5	2,080	0.2	---
Teacher Training and Improvement Act, proposed legislation Set aside of 5 percent of the total appropriation would be allotted to the Department of the Interior to conduct teacher training and improvement programs to benefit students in BIA Indian schools.	---	---	---	---	0.3

I. Programs Specifically Targeted to Indians -- Continued

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
HEA Title III - Institutional Aid 2/	N/A	$2.8	N/A	$2.7	$2.8
Programs to assist institutions of higher education which have limited financial resources and which serve significant percentages of low income students.					
Education for the Handicapped - BIA Setaside	5,400	11.2	5,400	11.2	11.2
To offset part of the excess costs of educating handicapped children. One percent of the amount available for the States under the State Grant program is transferred directly to the BIA for use in BIA schools.					
II. Other Programs Supporting Indians					
Chapter 1	58,609	37.1	58,000	35.6	37.8
Grants to LEAs to support supplementary compensatory educational services designed to increase the educational attainment of					

II. Other Programs Supporting Indians -- Continued

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
Chapter 1 -- Continued economically disadvantaged children to a level appropriate for children of their age.					
Chapter 2 3/ Block grants for improving elementary and secondary school programs, awarded to all 50 States, D.C., Puerto Rico, and five Outlying Areas. At least 80% of the funds are reallocated to local school districts.	N/A	$5.0	N/A	$4.8	$5.0
HEA Title IV - Student Aid Programs of financial support for needy students attending institutions of postsecondary education, including Guaranteed Student Loans, proposed Pell self-help grants, and Work-Study.	35,000	37.8	34,000	35.8	27.9

II. Other Programs Supporting Indians — Continued

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
Vocational Education - State Programs 3/	123,400	$7.8	123,400	$5.7	$3.9
Formula grants to States to support improving access of special needs population to vocational education as well as improvement and expansion of the vocational education enterprise.					
Science and Mathematics - State Grants	N/A	.6	N/A	.3	---
Formula grants to States support projects to improve instruction in science, mathematics, computer learning, and foreign languages.					
Adult Education 3/	26,500	1.0	26,500	1.0	1.0
Grants to States for programs of adult education to enable adults to acquire basic skills necessary to function in society, and to complete secondary school.					

II. Other Programs Supporting Indians -- Continued

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
Education for the Handicapped 3/	30,400	$8.2	30,500	$8.2	$8.2
Grants to assist States in ensuring that all handicapped children have available to them a free, appropriate public education, based on the number of handicapped children receiving special education in each State.					
Rehabilitation Services 3/	5,800	6.9	5,800	6.9	6.9
Grants to States to assist physically and mentally handicapped individuals to prepare for and engage in gainful employment to the extent of their capabilities.					
Bilingual Education	29,600	13.2	28,200	12.5	13.7
Grants to school districts to address the severe academic problems of school children who are limited English proficient.					

II. Other Programs Supporting Indians — Continued

	1985 Estimated Number of Indian Students Benefiting	1985 Appropriation	1986 Estimated Number of Indian Students Benefiting	1986 1/ Appropriation	1987 Budget Request
Special Programs for the Disadvantaged	17,648	$6.3	7,000	$2.9	$2.9
Provides support services designed to increase admission to and graduation from college by individuals from disadvantaged backgrounds.					
Minority Institutions Science Improvement 2/	N/A	.4	N/A	0.3	0.4
Provides support to improve science, mathematics, and technology education at predominantly minority institutions and to improve access to science and engineering careers for minority students.					
TOTALS		438.7		422.6	437.4

1/ Reflects figure after Gramm-Rudman and proposed rescissions.

2/ Grants are awarded to institutions to develop self sufficiency or to develop specific educational programs, not to provide direct student services. Appropriation amounts for Title III and MISIP reflect the amount of funds going to predominantly Native American institutions.

3/ Estimates based on Indians' proportional distribution in the population.

Note: These are the latest (February) figures and may differ slightly from the President's Budget .

PROPOSED STATE GRANT PROGRAM FOR INDIAN CHILDREN

Question: Although the funding level looks somewhat comparable to the FY 1986 adjusted level, the question is how many individuals will benefit from this proposed state grant approach?

Answer: The number of children who will participate in the new State grant program is difficult to estimate. The current estimate is that 347,000 Indian children would be counted in the eligible population and that about 257,000 would actually receive services.

The estimates were based on data for both Part A and Johnson-O'Malley in 1985. An unduplicated estimate of the number of public school children who were counted for partipation in either Part A Grants to LEAs, Johnson-O'Malley, or both, in 1985 is about 347,000.

We know from the annual rolling audits of the Part A Grants that about 74 percent of the Indian children who are counted by a district to receive Part A funds actually receive services. The 1982 national impact study by Development Associates also found similar participation rates. In 1985, about 329,500 children were counted by districts for participation in Part A programs; about 244,000 probably received some services. If the same rate holds true for Johnson-O'Malley, the total number of Indian children who participated in one or more program activities in either or both programs would be about 257,000 in 1985.

It is not possible now to estimate the effects of the provisions in the legislative proposal that require the use of criteria to weight local awards by the number of disadvantaged Indian children in the districts or that require the schools to concentrate services on children with the greatest educational needs. We based our 1987 estimates on the 1985 numbers of children counted or estimated to be served under the two programs. It is probable, however, that fewer than 74 percent of the children would actually receive services if the program concentrates more on Indian children who are educationally disadvantaged. The concentration of funds on fewer children will enhance the program's effectiveness.

TOTAL NUMBER OF INDIAN CHILDREN

Question: The Department of Education justification states that funding in FY 1986 for Grants to Local Educational Agencies will serve 244,000 children. The Bureau of Indian Affairs justification states that in FY 1986, 177,000 students will benefit from the Johnson O'Malley program.

How does the Department justify this merger when it is projected that in FY 1987 only 257,000 individuals will benefit?

Answer: Many of the same children are counted for both Part A and Johnson-O'Malley programs. In 1985, 92 percent of children receiving Johnson-O'Malley funds were in districts that also received Part A funds. Many or all of the same children would be counted for Part A participation.

According to the 1980 Census, there were about 383,000 Indian children in public and BIA schools in 1980. By 1985, the number should be a little larger for this group, although a specific number is not available. We have estimated that in 1985 about 347,000 public school children are counted for participation in either Part A, JOM, or both. This figure pushes at the limit of the total population. The Part A and JOM children cannot exceed the total number of Indian children in school; and we know that there are some districts with Indian children which do not participate in either program.

Thus we believe our estimate for the total number of public school children counted under either program -- 347,000 -- includes almost all eligible Indian children and in fact cannot be much higher.

It should also be noted that there is a difference between the number of Indian children counted by the districts in order to receive funding and the number who actually receive some services. The following table displays the estimated number of public school children eligible and served for FY 1985 to FY 1987. The total number estimated to be served applies the Part A percentage of 74 percent participation.

Indian Children in Public Schools

	FY 1985		FY 1986		FY 1987	
	Eligible	Served	Eligible	Served	Eligible	Served
Part A Grants to LEAs	320,000	244,000	320,000	244,000	---	---
Johnson-O'Malley	177,000	NA	177,000	NA	---	---
Total children	347,000	257,000	347,000	257,000	347,000	257,000

EDUCATION PERSONNEL DEVELOPMENT

Question: In regard to the funding for the former educational personnel development program, will this merger provide for the continuation of any FY 1986 grants?

Answer: The Department's legislative proposal does not merge the educational personnel development program into the new State grant program. The authority for the program would end in FY 1986.

The funding for educational personnel training has been added to the total for State grants. States may use some of their share of the State grant for education personnel development activities, and there are other Federal sources of aid for students in education programs.

There have been no continuation costs for these projects since 1984. The grants have been awarded on a competitive basis each year since then.

COST EFFICIENCY OF STATE GRANT PROGRAM

Question: Why is it felt that the distribution of funds for Indian children will be more efficient if it is done through the State educational agencies rather than through local educational agencies or Indian tribes?

Answer: Expected gains in cost efficiency from our legislative proposal would result from consolidating the Part A Grants to LEAs and Johnson-O'Malley programs, rather than from the shift to State administration. Merging the two programs would eliminate much of the duplication of administration inherent in operating two programs for overlapping populations and would enhance the ability of local school districts and Indian communities to plan coherant educational programs for the children.

The proposal to involve State educational agencies is based on the need to involve States in Indian education programs. In recent years, States have taken the lead in improving education, and educational reform has become a major issue in almost every statehouse and State legislature. Yet the Department's Indian education formula grant program has always been operated on a direct Federal-to-local basis. Our proposal would change this, providing grants to State educational agencies which would in turn distribute funds by formula to local educational agencies.

Since States are closer than the Federal government to the local public schools where programs for Indian children are operated, and because the States have become so active in educational reform, the proposed change would ensure that Indian education is an integral component in the national campaign for educational excellence.

INDIAN PARENT COMMITTEES

Question: Discuss how the involvement of Indian parent committees will be maintained under the proposed legislation.

Answer: The new program would continue the strong involvement of the Indian community, which is a major feature of the current Part A and Johnson-O'Malley programs.

Our proposed legislation requires establishment of State and local education committees. A majority of the members of the State advisory committee would be Indian parents or representatives of Indian tribes or Indian organizations in the State. The State would have to consult with the State advisory committee when developing the formula for distributing funds to local school districts, and would carry out "active and continuing consultation" with the State committee.

Local Indian education committees would be composed of, and selected by, parents of Indian children enrolled in the district's schools, teachers, and, where appropriate, Indian secondary school students. A majority of the local committee members would be parents of the Indian children who will be served by the project.

The school district's application must be developed with the participation and written approval of the local Indian education committee.

ELIGIBILITY REQUIREMENTS

Question: What eligibility requirements will the Department use in determining the participation of Indian children in this new State grant program in FY 1987?

Answer: Eligible children for this program would need to meet one of the same criteria as in the current Indian Education Act. The criteria include: (1) a member of a tribe, band, or other organized group of Indians, including terminated tribes and State-recognized tribes; (2) a descendant, in the first or second degree, of an individual who qualifies under the first provision; (3) an individual who is considered by the Secretary of the Interior to be an Indian for any purpose; or (4) an Eskimo, Aleut, or other Alaska Native.

However, local educational agencies must, in using funds received under the program, give priority to those educational areas and those students where the needs are greatest. Further, the State educational agency, in distributing funds to school districts, would use the general definition of Indian plus additional criteria for children who are educationally or economically disadvantaged. The additional criteria would be developed by the State educational agency in consultation with the State advisory committee and would include such criteria as the number of Indian children from low income families, from sparsely populated areas, or who score below grade level on standard tests of educational achievement.

DOCUMENTATION OF ELIGIBILITY FOR FY 1986 PART A GRANTS

Question: How has the Department attempted to implement the provisions of House Concurrent Resolution 276 which specifies that the proof of eligibility requirements under the Indian Education Act should not be strictly enforced until FY 1987?

Answer: The Department has informed districts that, in 1986, they may continue to count eligible students for whom they are still seeking to obtain completed forms to generate fiscal year 1986 funds for use in the 1986-1987 academic year.

The Department will publish regulations to clarify what forms of documentation will be acceptable to verify that a child may be counted. Through the rulemaking process, the public, including Indian parents and school officials, will have the opportunity to help develop regulations that are consistent with statutory requirements, and are both effective and equitable. Proposed rules will be published as soon as possible.

STATE SHARE OF GRANTS FOR INDIAN CHILDREN

Question: The justification on page 16 states that under the proposed legislation, State educational agencies may retain up to five percent of the State allotment for administration of special programs. How was the percentage for administrative costs determined?

Answer: The State set-aside would support not only administrative activities but also special programs and technical assistance activities by the State educational agency. The percentage was developed based on review of other State administered programs. State set-asides in other Department programs range from Chapter 1 Grants for Disadvantaged Children at 1 percent; Education for the Handicapped at 5 percent; Vocational Education at 7 percent; and the Chapter 2 block grant at 20 percent (actual administrative costs are about 3 percent).

TARGETING AID

Question: On page 17 of the justification it states that "Today, the Indian population remains disadvantaged, but has made significant educational gains. . . (I)n order to allocate Federal funds more efficiently, the State grant program will target aid on educationally disadvantaged Indian children."

How will the targeting of this aid affect the size of the populations of Indian children served in FY 1987?

Answer: With respect to initial distribution of funds to States and school districts, the legislation would distribute funds based on all Indian children enrolled in school, with a special weight for those on or near reservations. State educational agencies would distribute funds to school districts based on all Indian children in the districts plus a weight for educational disadvantagement. Thus, initially all Indian children would be eligible for service.

However, the school districts must serve their Indian children who are in greatest educational need. Until this provision has been implemented, we will not be able to determine its full effect. We know that under the current Part A program about 74 percent of the children who were counted and thus eligible for services actually participate in program activities. Greater emphasis on disadvantaged Indian children may lower this figure somewhat.

ASSISTANCE TO STATES AND INDIAN COMMUNITIES

Question: How does the Department propose to facilitate States taking full responsibility for the Indian children in public schools and the Indian community building communication links with the State educational agencies?

Answer: A key feature of our legislation is the involvement of States with the Federal programs for Indian education in public schools. Our initial opportunity to provide guidance and assistance to SEAs in accepting the responsibility for the Indian education

Question: What steps have been taken by the Department to assure acceptance of the approach proposed by this new legislation?

Answer: The Department has met with a variety of Indian and educational groups to explain the new approach and to listen to their questions and concerns. We have made changes in our earlier draft legislation in response to questions received at these meetings.

We have met with representatives from the following groups:

> Indian groups -- Montana Indian Education Association, the National Congress of American Indians, National Indian Education Association, National Tribal Chairmen's Association, National Advisory Council on Indian Education, and the Navaho Nation.
>
> Education groups -- Council of Chief State School Officers, National School Boards Association, and State directors of Indian education from 10 States with large Indian populations.

STATE ROLE IN INDIAN EDUCATION

Question: The report states that although States are eager to administer the federally funded Indian education programs, States will not be able to assume the trustee relationship of the federal government that is an inherent part of the Indian education programs. Why does the Department not view this as an obstacle which could threaten the success of the programs?

Answer: The Department of Education's current programs for Indian children do not involve a trusteeship relationship with Indian tribes. The change to a State grant program would continue the current arrangement. As far as we are aware, States or public school districts receiving Johnson-O'Malley funds are also not participating in a trusteeship relationship.

The public schools are presently being funded to a great extent by the States (48 percent of funding in 1982-83). The schools are subject to State regulations and certification. The children, Indian and non-Indian, in these schools are participating in a number of other Federally-funded State administered programs. The Department's proposal would put the new Grants for Indian Children program on the same basis as other Department of Education State grant programs, while including special provisions to reflect the Indian community's unique concerns.

Question: The report further states that in respect to local educational agencies only 21 percent of the district administrators and 37 percent of the project directors reported that they had had any assistance from the State educational agencies in the past. Why was this minimal contact used as a basis for the decision to involve the State educational agencies in the administration of the Part A program?

Question: What steps have been taken by the Department to assure acceptance of the approach proposed by this new legislation?

Answer: The Department has met with a variety of Indian and educational groups to explain the new approach and to listen to their questions and concerns. We have made changes in our earlier draft legislation in response to questions received at these meetings.

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Question: The report further states that in respect to local educational agencies only 21 percent of the district administrators and 37 percent of the project directors reported that they had had any assistance from the State educational agencies in the past. Why was this minimal contact used as a basis for the decision to involve the State educational agencies in the administration of the Part A program?

Answer: The study only reviewed the Part A program as it existed in 1982. The program was one in which the States were not directly involved and therefore felt little need to provide assistance. We were surprised at the time that the study's contractor found as much State activity as it did.

Under our proposal the State would be directly involved with Indian education programs and would be required by the legislation to provide technical assistance to local projects and monitor the awards. The State would also use up to five percent of the State grant for administration, special projects, and technical assistance.

Question: How does the Department address the fact that the two major constituencies -- the Indian community and the local educational agencies -- have strong feelings against the involvement of the State educational agencies?

Answer: The national impact study found that while 88 percent of the State representatives interviewed felt that their States could administer Indian education better than the Federal government, over a third (35 percent) of local Part A project directors and many Indian leaders expressed opposition to a role for the SEA. However, 47 percent of the local project directors felt the SEA should play some role and 18 percent felt that the SEA should play a large role in Indian education. We are aware of the opposition to our proposal, but believe the benefits to be gained are considerable and worth the disruptions involved in the change.

The legislative proposal contains many safeguards against arbitrary action by State officials and builds structures that will ensure involvement by the Indian community in State decisions and activities. We have met with Indian groups and plan to continue to do so, both in Washington and in trips to the field this summer. By and large we believe the Department has a good record in administering Indian education programs without bias. We would monitor the States to ensure that this continues.

Finally, the National Advisory Council on Indian Education would be responsible for evaluating the State grant program and would report problems to the President and Congress.

STATE USE OF ITS SHARE OF THE STATE GRANT FOR INDIAN CHILDREN

Question: Is it anticipated that State educational agencies will hire more staff to be able to more efficiently administer these new grants?

Answer: Many States would probably hire some staff to administer the grants. Some of the States which already have Indian units may choose to fund more special programs and technical assistance activities. The legislative proposal includes a "supplement not supplant" provision similar to those in most Department of Education programs, so States could not use the funds to pay for staff or programs that were already in place before the new State grant program began.

Question: Since operations at the State level vary, how will the Department assure consistency in the services provided to Indian children?

Answer: The Department would publish regulations to specify requirements for areas that need interpretation and would review carefully the State applications, including State agency procedures for providing technical assistance and monitoring local projects. Once awards were made, the Department would conduct State reviews, including visits to local projects, and would review annual reports from the State educational agencies. The National Advisory Council on Indian Education would evaluate the program and provide recommendations for improving its administration. Finally, the Department conducts evaluation studies periodically which provide useful information that can be used to improve program services.

COORDINATION WITH THE BUREAU OF INDIAN AFFAIRS

Question: Has the Department of Education discussed with the Bureau of Indian Affairs its plan for coordinating aid and technical assistance to meet the needs of each school?

Answer: So far the Department has primarily consulted with the Bureau of Indian Affairs regarding development of the legislative proposal. Both agencies have shared information about the operations of their current programs and the special needs of their target populations. We plan to continue our collaboration during implementation of the State grant program.

HISTORY OF GRANTS

Question: Provide for the record a history of the grants to local educational agencies in FY 1984, FY 1985, and that which is anticipated in FY 1986 and FY 1987.

Answer: Table 2 shows actual awards for 1985 and our best estimate, at this time, for 1986 and 1987. The 1986 estimate is merely prorated from 1985. The 1987 estimate is based on the final version of the formula in our legislative proposal.

The formula would distribute funds to States in FY 1987 based on the number of Indian children in districts which apply to participate plus the number of Indian children who are on or near a reservation. This provides double weight for children on or near a reservation. The table uses Johnson-O'Malley children as a proxy for children on or near reservation. The distribution as portrayed provides some guidance as to the likely effects of the formula.

TABLE 2 : PROPOSED FORMULA GRANT FOR INDIAN EDUCATION

1986 ESTIMATES DEVELOPED BY PRORATING 1985 FUNDING DISTRIBUTION BASED ON 1986 FUNDING TOTALS.
1987 FORMULA ESTIMATED BY DISTRIBUTING FUNDS BASED ON ALL INDIAN CHILDREN PLUS THE NUMBER RECEIVING JOHNSON-O'MALLEY FUNDS

	PART A GRANTS TO LEAS		JOHNSON-O'MALLEY			1987 ESTIMATED FUNDING, WITH HOLD HARMLESS			
STATE	1985 FUNDING	1986 EST FUNDING	FY 1985 FUNDING	FY 1986 EST FUNDING	1986 TOTAL ESTIMATED FUNDING	FUNDING	PERCENT	CHANGE FROM FY 1986	PERCENT CHANGE
1 ALABAMA	$746,126	$704,202	$0	$0	$704,202	$834,797	1.19%	130,595	18.55%
2 ALASKA	$6,797,853	$6,467,901	$7,286,571	$5,621,823	$12,089,724	$13,626,906	19.38%	1,537,182	12.71%
3 ARIZONA	$3,968,167	$3,775,562	$4,977,830	$3,842,982	$7,618,544	$9,311,320	13.24%	1,692,776	22.22%
4 ARKANSAS	$132,770	$126,326	$0	$0	$126,326	$165,447	0.24%	39,121	30.97%
5 CALIFORNIA	$3,822,051	$3,636,538	$589,958	$454,418	$4,090,956	$4,098,070	5.83%	7,114	0.17%
6 COLORADO	$212,666	$202,344	$117,396	$90,913	$293,257	$328,882	0.47%	35,625	12.15%
7 CONNECTICUT	$26,284	$25,008	$0	$0	$25,008	$25,008	0.04%	0	0.00%
8 FLORIDA	$80,125	$76,236	$61,841	$48,225	$124,461	$124,461	0.18%	0	0.00%
9 HAWAII	$12,140	$11,551	$0	$0	$11,551	$11,551	0.02%	0	0.00%
10 IDAHO	$194,841	$185,384	$240,854	$184,186	$369,570	$461,281	0.66%	91,711	24.82%
11 ILLINOIS	$122,821	$116,860	$0	$0	$116,860	$116,860	0.17%	0	0.00%
12 INDIANA	$8,401	$7,993	$0	$0	$7,993	$8,546	0.01%	553	6.92%
13 IOWA	$98,050	$93,291	$68,108	$52,316	$145,607	$145,607	0.21%	0	0.00%
14 KANSAS	$200,192	$190,475	$87,919	$67,414	$257,889	$257,889	0.37%	0	0.00%
15 LOUISIANA	$322,588	$306,930	$10,358	$7,912	$314,842	$314,842	0.45%	0	0.00%
16 MAINE	$42,659	$40,588	$28,648	$22,155	$62,743	$62,743	0.09%	0	0.00%
17 MARYLAND	$156,636	$149,033	$0	$0	$149,033	$149,033	0.21%	0	0.00%
18 MASSACHUSETTS	$71,593	$68,118	$0	$0	$68,118	$68,118	0.10%	0	0.00%
19 MICHIGAN	$2,039,810	$1,940,802	$323,362	$251,240	$2,192,042	$2,192,042	3.12%	0	0.00%
20 MINNESOTA	$1,558,241	$1,482,608	$848,166	$656,618	$2,139,226	$2,139,226	3.04%	0	0.00%
21 MISSISSIPPI	$10,481	$9,972	$49,555	$38,825	$48,797	$83,162	0.12%	34,365	70.42%
22 MISSOURI	$2,974	$2,830	$0	$0	$2,830	$2,958	0.00%	128	4.52%
23 MONTANA	$1,650,454	$1,570,345	$1,160,464	$892,350	$2,462,695	$2,557,921	3.64%	95,226	3.87%
24 NEBRASKA	$266,534	$253,597	$248,171	$192,425	$446,022	$446,022	0.63%	0	0.00%
25 NEVADA	$328,438	$312,496	$535,582	$415,533	$728,029	$889,440	1.26%	161,411	22.17%
26 NEW JERSEY	$60,261	$57,336	$0	$0	$57,336	$57,336	0.08%	0	0.00%
27 NEW MEXICO	$3,468,250	$3,299,909	$3,669,066	$2,852,616	$6,152,525	$6,195,762	8.81%	43,237	0.70%

TABLE 2 CONTINUED: PROPOSED FORMULA GRANT FOR INDIAN EDUCATION

STATE	PART A GRANTS TO LEAS		JOHNSON-O'MALLEY		1986 TOTAL ESTIMATED FUNDING	1987 ESTIMATED FUNDING, WITH HOLD HARMLESS			
	FY 1985 FUNDING	FY 1986 EST FUNDING	FY 1985 FUNDING	FY 1986 EST FUNDING		FUNDING	PERCENT	CHANGE FROM FY 1986	PERCENT CHANGE
28 NEW YORK	$1,006,886	$958,014	$453,975	$351,468	$1,309,482	$1,309,482	1.86%	0	0.00%
29 NORTH CAROLINA	$1,628,210	$1,549,181	$0	$0	$1,549,181	$1,848,957	2.63%	299.776	19.35%
30 NORTH DAKOTA	$627,292	$596,845	$342,635	$264,655	$861,500	$871,261	1.24%	9,761	1.13%
31 OHIO	$96,017	$91,357	$0	$0	$91,357	$91,357	0.13%	0	0.00%
32 OKLAHOMA	$9,658,726	$9,189,915	$3,373,385	$2,595,690	$11,785,605	$11,785,605	16.76%	0	0.00%
33 OREGON	$810,311	$770,980	$339,400	$267,122	$1,038,102	$1,038,102	1.48%	0	0.00%
34 RHODE ISLAND	$27,236	$25,914	$51,089	$40,711	$66,625	$72,237	0.10%	5,612	8.42%
35 SOUTH DAKOTA	$1,334,056	$1,269,304	$1,265,231	$982,173	$2,251,477	$2,254,740	3.21%	3,263	0.14%
36 TEXAS	$109,920	$104,585	$0	$0	$104,585	$104,585	0.15%	0	0.00%
37 UTAH	$495,865	$471,797	$703,826	$545,150	$1,016,947	$1,424,491	2.03%	407,544	40.08%
38 VERMONT	$57,730	$54,928	$0	$0	$54,928	$54,928	0.08%	0	0.00%
39 VIRGINIA	$16,837	$16,020	$0	$0	$16,020	$16,020	0.02%	0	0.00%
40 WASHINGTON	$2,334,972	$2,221,638	$853,261	$658,054	$2,879,692	$2,879,692	4.09%	0	0.00%
41 WISCONSIN	$1,006,848	$957,978	$686,501	$530,902	$1,488,880	$1,488,880	2.12%	0	0.00%
42 WYOMING	$298,711	$282,309	$163,749	$125,124	$407,433	$407,433	0.58%	0	0.00%
TOTAL	$45,903,023	$43,675,000	$28,557,790	$22,053,000	$65,728,000	$70,323,000	100.00%	$4,595,000	6.99%

PROPOSED TEACHER TRAINING INITIATIVE

Question: The proposed legislation would merge the educational personnel development program into the State grant program. The justification on page 34 states that part of the rationale for this proposal is the ability of Indians to participate in programs supported under the new Teacher Training Initiative proposed by the Department. What percentage of the eligible Indian students are anticipated to participate in this program?

Answer: Indian teachers would be eligible to participate in two ways in programs supported by our proposed Teacher Training and Improvement Act. The new program would replace with a broader teacher training authority the current Science and Mathematics Education program which provides funds to States for training of science and mathematics teachers.

First, teachers and other educational personnel in BIA schools, both BIA-operated and BIA-contract, could participate in programs offered by the BIA with its set-aside. The actual number of participants would depend on BIA's use of the funds. BIA used its 1985 $500,000 set-aside under the Science and Mathematics Education program to train 160 teachers who in turn educate 4,000 Indian children. The teachers constituted about 5 percent of the total BIA teaching staff.

Second, Indian teachers in public schools could participate in the programs funded by the SEA. The SEA would solicit applications from local school districts and other types of educational providers for a variety of inservice and preservice training activities.

Question: What amount is in the "small set-aside for the BIA initiative"?

Answer: Of the funds appropriated for the teacher training initiative, the Secretary would be authorized to reserve up to 20 percent for national discretionary activities. Of the remaining amount, 1/2 percent would be transferred to the BIA and the remainder would be distributed to the States and Outlying Areas. The formula is approximately the same for BIA's portion as under the Science and Mathematics Education program.

At the Administration's FY 1987 request level of $75 million, $300,000 would be set-aside for the BIA. This compares to $500,000 provided in FY 1985 and $215,330 in FY 1986 under the Science and Mathematics program.

RESOURCE AND EVALUATION CENTERS

Question: How does the Department propose to compensate for the loss of the Resource and Evaluation Centers and the services they have provided to Indian children in the past?

Answer: Under the proposed legislation, grants would be made to State educational agencies which would in turn distribute most of the funding, based on a formula, to local educational agencies. States could retain up to five percent of the total State award for administration, special programs, and technical assistance to local grantees. The State educational agencies, either directly or through contract, would provide the same types of services the resource and evaluation centers currently perform. The new legislation requires that the State application include a description of the State educational agency's procedures for providing technical assistance to the local projects.

FUNDING FOR DISCRETIONARY PROGRAMS IN FY 1986 AND FY 1987

Question: According to page 34 of the justification "intent (of this proposed legislation) is to maintain most of the funding spent at the 1986 level but redirect it to programs of higher priority and greater efficiency."

How can the Department make this statement in light of the fact that the FY 1986 funding level for these programs was $13,125,000 and the proposed funding level in FY 1987 is only $11,500,000?

Answer: The FY 1987 budget request would redirect funds for the Part A and Part B programs. Table 3 attempts to display the comparable amounts in FY 1986 and FY 1987, although the Department did not transfer the funds on a one-to-one basis. The final request for the specific programs involved in these transfers is about .6 percent less than the initial 1986 appropriation and about 3.9 percent more than the 1986 appropriation after sequester.

INDIAN FELLOWSHIPS

Question: In respect to fellowships, the funding has been reduced by $1,337,000 from the FY 1986 adjusted level. How many students will be deprived of fellowships due to this reduction in funding?

Answer: About $1,398,000 is available for Indian fellowships in FY 1986 after sequester. About 210 awards will be made using those funds. About $1,461,000 was available from the initial appropriation before sequester.

In 1987, based on the proposed realignment of program responsibilities between Education and Interior, the Department proposed to "transfer" $11,500,000 for the Indian fellowships and two other discretionary programs to BIA. This is a slight increase of $314,000 over the 1986 level after sequester for the three programs involved and a decrease of $190,000 from the initial 1986 appropriation.

BIA in turn has proposed to allocate $2,000,000 of the total $11,500,000 for graduate fellowships and chose to reduce funding for its current fellowship program. In 1987, about 350 graduate students would receive fellowships, about 230 fewer student awards than will probably be funded in FY 1986 between the two fellowship programs.

TABLE 3

Indian Education Activities
(dollars in thousands)

	FY 1986		
	Initial Approp.	After Sequester	FY 1987
Part A Indian-controlled schools program.........	$4,384	$4,195	---
Part B special projects for Indian children.....	5,845	5,593	---
Part B fellowships........	1,461	1,398	---
Funds "transferred" to the BIA for enrichment and fellowship programs......	$11,690	$11,186	$11,500
Part B educational personnel development...	2,262	2,165	---
Part B resource and evaluation centers......	2,241	2,145	---
Part A grants to LEAs.....	45,637	43,675	---
Johnson-O'Malley..........	20,500	19,618	---
Funds redirected to the State grant program.....	$70,640	$67,603	$70,323

LEVEL OF SUPPORT AVAILABLE FROM STUDENT FINANCIAL AID PROGRAMS

Question: In Mr. Davenport's opening remarks he states that "the adverse effect of this proposal should be minimal since any Indian students who are unable to obtain BIA fellowships should be able to participate in our regular student assistance programs." What is the likelihood of these students receiving student assistance at a level equal to past fellowships?

Answer: Many of the students should be able to receive student assistance depending upon their economic situation and the institution they attend. The average award for the Indian Education fellowships was about $6,250 in 1985 and this level of support could be attained under the student assistance programs supported by the Department of Education. However, the level of support would not go as high as the highest awards in most of the categories. The highest amounts that could be obtained from

Department student aid programs is about $13,000 a year for undergraduate students. A graduate student could obtain up to $6,200 a year from the Guaranteed Student Loan and Work Study programs and, under existing law, borrow up to $12,000 total from the National Direct Student Loan (NDSL) program (including undergraduate and graduate study). Under the Department's proposed legislation to revise the Higher Education Act, eligible students could obtain up to $10,000 a year from the NDSL program.

The following table displays the total funding per category, number of fellows, average award, smallest award, and largest award.

FY 1985 Fellowship Awards

	Total Funding	Number of Students	Average Award	Smallest Award	Largest Award
Business	$183,597	37	$4,962	$672	$19,163
Education	209,045	27	7,742	1,096	16,694
Engineering	193,324	52	3,718	140	15,690
Law	299,866	39	7,689	377	15,974
Medicine	344,923	32	10,779	1,580	28,450
Natural resources	98,757	25	3,950	495	9,740
Psychology	52,517	9	5,835	870	10,140
Total	$1,382,029	221	$6,254	$140	$28,450

EFFECTS OF FORWARD FUNDING ON DISCRETIONARY PROGRAMS

Question: How is the question of forward funding addressed in the merger of the Indian education programs with those in the Bureau of Indian Affairs?

Answer: Forward funding is not a problem in the "transfer" of funds to the Bureau of Indian Affairs. The Department of Education programs are awarded annually based on competition. No continuation awards are made, so no project obligations would go unfunded.

The BIA could operate the program on a current funded basis, by requesting applications early, before Congress has appropriated the funds, or can wait until final Congressional action has been accomplished and seek applications for the winter of 1987. Awards would then be made during the summer of 1987; the projects would operate primarily during school year 1987-88. The Department of Education prefers to operate most of its discretionary programs under the latter schedule in order to give schools maximum planning time and provide for the least amount of disruption resulting from changes in funding.

ADMINISTRATIVE COST SAVINGS

Question: What savings are anticipated in respect to administrative costs with this proposed merger?

Answer: The administrative savings anticipated from the legislative proposal would be shown in reduced staffing requirements and support costs of the Department's Indian Education Program in FY 1988 and future years. The reductions would not occur until 1988 because of the need to monitor existing programs in FY 1987. Currently about 36 staff are involved in direct administration of 1,260 grants and 221 fellowships. The total staff for Indian education is 48 positions. By 1988, the program would fund about 42 States and 28 or so adult education projects.

In general, State grant programs have significantly lower staffing requirements than programs for local educational agencies. The Department's migrant education program would be similar in many ways to the planned Indian education program. The migrant education staff of 24 administer the State grant migrant education program plus a couple of small discretionary programs. The staff include substantive specialists in migrant education as well as administrative and regulatory specialists.

EVALUATION OF INDIAN-CONTROLLED SCHOOLS

Question: Discuss how the findings of the recently completed study "An Evaluation of Indian-Controlled Schools" has impacted on the Department's decision to merge Part A and Part B programs with BIA programs.

Answer: The decision to assign responsibility for Indian-controlled schools programs to the BIA and for public schools to the Department was made before the final report was available from the Indian-controlled schools evaluation study. However, the study confirmed internal ED analyses of the schools' very high expenditures compared to other types of schools. The study showed that the schools in general do not show gains in student achievement and attendance commensurate with the large funding received.

It is time for one agency to take control of the major sources of funding for the Indian-controlled schools and to provide guidance and technical assistance to improve their operations. Since the BIA provides the schools with basic support, it is the logical agency to coordinate supplementary aid for special programs as well.

A second concern not related to the study findings was the considerable difference in the availability of special services for Indian children in BIA-operated schools compared to those in the BIA-contract schools. Only the latter are eligible under current legislation to participate in the Part A and Part B programs, yet many of the Indian children in BIA-operated schools could also use special help. BIA plans to use the funds transferred from ED for special programs in both types of schools. Thus both types of schools that get basic funding from the same equalization formula would have the same opportunity to compete for special aid for program improvement and special services.

PROGRESS IN INDIAN ADULT EDUCATION

Question: Discuss the trends in Indian adult education over the past five years. What progress has been made to date in respect to the advancement of Indian adults?

Answer: Information is not available on trends on Indian adult education from 1980 to 1985. The U.S. Census Bureau only updates its Indian educational data every ten years, and neither the Department of Education nor the Bureau of Indian Affairs collect much data on educational attainment of Indians. In most national surveys, the Indian population is so small that additional samples with extra costs must be drawn before sufficient Indians are identified to provide information on the population.

Question: What progress is anticipated in FY 1987 and beyond?

Answer: The very significant educational gains that have occurred in the Indian population for the past few decades will likely continue, since younger Indians are more educated than their parents and will bring up even more educated children. This will continue to reduce the percentage of uneducated and illiterate Indian adults over time.

There are a number of adult education programs in which Indians participate, including volunteer and church programs, grants to States under the Adult Education Act, BIA-funded programs, and the Indian Education Act's adult education program. Participation by Indian adults in these programs should continue the progress towards reducing the present pool of uneducated Indian adults. The 1990 Census should provide illuminating information regarding the educational achievement of Indians.

ELIMINATION OF ADULT EDUCATION DEMONSTRATION PROJECTS

Question: According to the justification on page 28 it states that the proposed legislation "would continue the service projects funded under the current Indian adult education program, while eliminating specific authorities for planning, pilot, and demonstration projects; research surveys; and information dissemination". Discuss the impact of the programs proposed for elimination in FY 1987.

Answer: First, the Department has not funded research surveys or information dissemination activities for Indian adult education in recent years. Thus the deletion of these authorities will not cause any impact on present activities.

Second, we do not foresee much impact from the elimination of specific authority for planning, pilot, and demonstration projects. The evaluation study of the Part C adult education program, conducted by Pelavin Associates, Inc., in 1984, found that most of the adult education projects were concentrating on providing educational services, no matter what their title. The study also found that the few real demonstration projects were expensive and produced products that had limited applicability. Most Indian programs are sufficiently individualistic that materials or models developed in one site are often not used at other sites.

The study found most of the service projects visited to be using standard adult education instructional techniques, but found that these were provided with special sensitivity to the needs of adult Indians. The projects often provide supplementary services such as assistance with transportation or child care that other types of adult education programs would like to provide but often are not able to due to funding limitations or project requirements.

Our proposed legislation contains specific authority for research and evaluation activities. If our legislation is passed, special adult education developmental and demonstration activities or research surveys could be funded under that authority as needed.

If our legislation is not passed in time, since the current Part C legislation does not mandate demonstration projects, we would request that the Part C funding be used on service projects for FY 1987.

Question: With the elimination of demonstration projects, what avenue will be available for experimentation in addressing the problems of educating adult Indians?

Answer: As noted above, our proposed legislation would contain authority to conduct experimental programs if needed. Demonstration projects have been funded since 1974 with little impact on the way the program operates.

The program's regulations do not preclude applicants from using innovative approaches in their service projects. Further, if it becomes apparent that new ways of providing services or new materials are needed, we can adjust future budget requests to provide support fo these activities. At this time, we propose to concentrate on service projects.

GRAMM-RUDMAN-HOLLINGS SEQUESTER FOR INDIAN ADULT EDUCATION

Question: What is the impact of the Gramm-Rudman-Hollings reductions in respect to the number of participants who will be able to participate in the educational services available to Indian adults in FY 1986?

Answer: Gramm-Rudman-Hollings provisions reduced Part C adult Indian education from $2,922,000 to $2,797,000 in FY 1986. This reduction would decrease the estimated number of projects to be funded from 28 to 24 and would eliminate services for an estimated 400 participants. Grant awards for this program will be made in May 1986, and we will have better information after completing the award process regarding the impact.

NUMBER OF ADULTS SERVED

Question: The FY 1987 proposed funding level is $2,940,000, the same funding level which was appropriated in FY 1985. Why, despite maintenance of the FY 1985 funding level, is there a reduction in the number of individuals who are able to participate in this program?

Answer: Even though the 1985 and 1987 levels for adult education are the same, there is a difference in the composition of the projects being supported. This difference resulted in the slight change in estimated number of adults served. While we estimate about 12 fewer participants (9,550 instead of 9,562), the total will vary even more as a result of the funding competition. Basically we expect to serve about the same number of adults as were served in 1985.

OMB REDUCTION IN ADULT EDUCATION FUNDING

Question: The Department made a request to OMB for $3,500,000 for Part C -- Indian adult education programs. The Department's request to Congress is for $2,940,000. What was the rationale used by OMB in reducing your request?

Answer: The OMB rationale for reducing the Department's 1987 Part C budget request was to hold that activity to the 1986 budget request level of $2,940,000, which was the same level as 1985. The actual appropriation for 1986 was $2,922,000 and this was reduced to $2,797,000 by the Gramm-Rudman-Hollings sequester. OMB felt that in a time of general budget reductions, restoring the program to the higher of its most recent appropriations was sufficient support.

Question: What is the impact of the $560,000 reduction in respect to the number of individuals which can be served in FY 1987?

Answer: Our budget request of $2,940,000 would serve about 9,550 Indian adult participants. A budget of $3,500,000 would provide services for about 1,800 more participants.

IMPROVEMENT OF PART C INDIAN EDUCATION PROGRAM

Question: In the FY 1986 Continuing Resolution, the statement of the managers outlined that the Department needed to take administrative actions to remedy problems in the Part C program. Discuss what actions the Department has taken to remedy the problems in the Part C program.

Answer: The Department has taken the following actions to address the problems identified in the Part C evaluation study.

The study found that the competitive grant process did not necessarily direct funds to adult Indians in locations where no other programs were available. Also, some of the same grantees were funded year after year.

The Federal Register announcement requesting applications for the Part C program for FY 1986 included an "invitational" priority for applications that addressed the special needs of Indian adults who reside in rural or isolated areas where adult educational services are not provided by a private organization, local educational agency, State agency, or the Bureau of Indian Affairs. Placing an emphasis on the rural Indian adult population should help to target the funds on communities which have a greater need for services.

Applicants do not receive points during the review process for submitting proposals that respond to invitational priorities but are made aware that the Department is interested in receiving applications in the area addressed. The final distribution of awards in 1986 will be reviewed to determine if the invitational priority was sufficient to redirect some funds or the regular priorities in the regulations should be revised.

In response to a finding that several Part C grantees had told the contractor that they had been denied Adult Education Act funding from their State departments of education, Office of Elementary and Secondary Education staff met with representatives from the Department's Office of Vocational and Adult Education in February 1986 to exchange information on funded projects and to develop strategies to involve State educational agencies in planning Indian adult education programs.

Also, during a February 1986 meeting between Office of Elementary and Secondary Education staff and State directors of Indian education, discussions were held regarding the availability of Adult Education Act funds for Indian organizations. The Office recommended that State Indian units encourage Indian community involvement in developing State plans for adult and vocational education, inform the Indian community of the availability of funds, and provide the community with information on how to apply.

The study found only limited dissemination of the models and materials that had been developed. To improve dissemination to the projects and the Indian community, the Office of Elementary and Secondary Education plans to identify successful programs, including Part C projects, which may be disseminated to and adopted by other grantees.

Finally, in response to the finding that some of the Part C projects appeared to have unnecessarily high administrative costs, and that the Office's staff needed additional training and guidance for improved program reviews and monitoring, the Office of Elementary and Secondary Education developed standards for use by staff when reviewing applications and monitoring projects. The standards apply to all the discretionary programs, including Part C adult education.

Question: How will these actions improve the FY 1987 program?

Answer: These are administrative changes intended to improve administration of the Indian adult education program, lower unnecessary costs, improve distribution of the funds to new grantees and new geographic areas, and increase Indian participation in the larger State grant program for adult education. At the end of FY 1986, progress will be reviewed to see if stronger means are necessary or if the programs have been improved. If necessary, additional changes could be made that would affect the FY 1987 awards.

PROGRAM ADMINISTRATION

Question: In FY 1987, there is a proposed increase of $247,000 from the FY 1986 adjusted level for program administration. Discuss the need for an increase in contracts and data processing services in FY 1987.

Answer: In FY 1987, $11,600 in additional funding is requested for data processing services. The funds will be used to restore data processing support to the pre-Gramm-Rudman level and, if our legislative proposal is funded, we would use the funds to help establish a data base system for State reports on the distribution of funds to local educational agencies and use of the funds.

If the legislative proposal is not authorized in time, the funds would be used to maintain a data base providing descriptive information about all the Indian education projects and to improve the rolling audit tracking system for the 380 or so Part A projects that would be audited. The data base provides information from the project proposals and reports which has been useful in policy development, justification of budget actions, and general description of the programs. The rolling audit data base includes information from the Department of Education staff's site visits to the one-third of Part A projects visited annually. It provides data for the report submitted annually to Congress as well as data used in policy development and program administration.

If our legislative proposal is accepted, about $20,000 in additional contract funds would be used for technical assistance meetings with State and local personnel on the new legislation and a small study to establish base line evaluation data. If the legislation is not passed, the funds would be used for the annual Indian education meeting of project directors and small-scale policy analyses and research studies.

IMPLEMENTATION TIMETABLE

Question: The justification states that "the present staffing level will be required in order to develop regulations and start up new programs, and close out grants and audit reports under the old programs". Discuss the timelines for these projects.

Answer: During FY 1987, staff will be needed to monitor projects and perform other administrative tasks relating to the forward-funded FY 1986 discretionary and formula projects, fellowships, and resource and evaluation centers' contracts. We estimate that about 1,260 awards will be made during FY 1986 which would operate during FY 1987. During the first few months of the fiscal year (October-December 1986), staff will also close out FY 1985 projects.

Transition tasks related to the new legislation would include the development of regulations and special guidance for the new program and providing technical assistance for State planning and implementation. Ideally, regulations and guidance would be developed during the first six months of the fiscal year (October 1986 - April 1987). State and local technical assistance would be concentrated during the second half of the fiscal year.

ASSURANCE THAT PROJECTS WILL MAINTAIN QUALITY

Question: What measures of quality assurance will the Department use if it plans to no longer conduct audits of these programs?

Answer: The Department would expect the State educational agencies to perform basic program reviews as they do in other State grant programs. Department staff will conduct site visits to the State educational agency and spot checks at the local level to ensure that the States are carrying out their monitoring responsibilities. The program would also be included in periodic audits by the Inspector General's office.

States must submit in their State plan a description of how they will monitor and provide technical assistance to local projects.

ADDITIONAL FUNDING FOR THE NATIONAL ADVISORY COUNCIL

Question: Provide for the Committee a breakdown of the additional $26,000 requested for travel, consultants, printing and other services needed for the implementation of the proposed changes in the Indian education programs.

Answer: The breakdown of the additional $26,000 requested for the National Advisory Council on Indian Education is as follows:

	1986 After Sequester	1987 Request	Change from 1987/1986
Travel	$30,000	$49,000	+$19,000
Consultants	15,200	16,200	+ 1,000
Printing	4,000	7,000	+ 3,000
Other Services	3,000	5,000	+ 2,000
Supplies	3,000	4,000	+ 1,000
	55,200	81,200	+26,000

The increase in funds is needed to carry out NACIE's mission under either the present legislation or the proposed legislation. The FY 1987 budget request includes funding for increased site visits and committee meetings to accomplish objectives curtailed in 1986 due to the Gramm-Rudman reductions. In 1986, the decrease in travel for council members to attend council meetings and the decrease in funding for consultant required NACIE to curtail 6 of 12 yearly council meetings. Regular meetings are necessary to enable NACIE to carry out its functions.

The increase in travel funds will also allow NACIE council members to again travel to local sites to conduct required assessments and make recommendations. This type of activity was curtailed during 1986.

As a result of the increase in travel, consultant fees for council members will increase proportionately.

The increase in printing costs is for the printing of the legislatively mandated Annual Report to the Congress. In 1986, NACIE's printing budget was reduced, causing an increased workload for the administrative staff in copying, addressing, and mailing the report to the Congress and to over 3,000 American Indians, Alaska Natives, and other recipients. The report was also severely reduced in size and scope.

Other services (equipment repair and maintenance and contracts) are increasing because the service fees charged for the maintenance of the word processer and printer and for the leasing of conference space for council members are increasing.

MEMBERS OF THE NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Question: Provide for the record a list of the 15 members of the National Advisory Council on Indian Education and a schedule of their upcoming meetings.

Answer: The advisory council's membership is as follows:

National Advisory Council on Indian Education

Michael L. Stepetin (Chairman)
1619 Southeast Morrison Ave.
Portland, Oregon 97214
Term expires 9/29/87

Robert B. Brewington
Brewington's Welding Corporation
P.O. Box 565
Pembroke, North Carolina 28732
Term expires 9/29/86

Louis R. Bruce
President, Native American Consultants, Inc.
725 2nd Street, N.E.
Washington, D.C. 20002
Term expires 9/29/85 *

Robert K. Chiago
Navajo Nation, Box 2490
Window Rock, Arizona 86515
Term expires 9/29/86

* Remains on the Council until the President appoints a successor.

Marie Cox
3201 Shadybrook Drive
Midwest City, Oklahoma 73110
Term expires 9/29/86

Gloria Duus
P.O. Box 4186
Yahtahey, New Mexico 87375
Term expires 9/29/87

Grace Goodeagle
Fried, Frank, Harris, Shriver, and Jacobson
600 New Hampshire Ave., N.W., Suite 1000
Washington, D.C. 20037
Term expires 9/29/86

Christine C. Harte
Systems Engineer, IBM Corp.
One IBM Plaza
Chicago, Illinois 60611
Term expires 9/29/85 *

Waldo "Buck" Martin
Wisconsin Department of Transportation
4802 Sheboygan Ave.
Madison, Wisconsin 53707
Term expires 9/29/87

Fred C. Nicol, Jr.
Hoffman Associates
165 South 5th Street
Lander, Wyoming 82520
Term expires 9/29/87

Evalu Russell
Route 3, Box 180C
Anadarko, Oklahoma 73005
Term expires 9/29/86

Thomas E. Sawyer
President, Indian Affiliates
555 South State Street
P.O. Box 1134
Orem, Utah 84058
Term expires 9/29/87

Clarence W. Skye
Executive Director
United Sioux Tribes of South Dakota
Box 193
Pierre, South Dakota 57501
Term expires 9/29/88

* Remains on the Council until the President appoints a successor.

Eddie L. Tullis
Tribal Chairman,
Poarch Band of Creeks
Star Route A, P.O. Box 105-A
Atmore, Alabama 36502
Term expires 9/29/88

Robert Youngdeer
Principal Chief,
Eastern Band of Cherokee Indians
P.O. Box 455
Cherokee, North Carolina 28719
Term expires 9/29/88

NACIE's planned schedule for FY 1986 is as follows. The next meeting of the full Council is tentatively set for September in the Fort Lauderdale, Florida area. This meeting will include site visits to the Seminole and Miccosukee reservations and holding public hearings to receive testimony from tribal and school representatives.

NACIE's oversight review of Indian fellowship awards will take place May 15 and 16 in Washington, D.C. There will be two executive committee meetings between now and the end f the fiscal year and one meeting each for the annual report committee and the government committee; the time and place for these meetings have not been set.

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MONDAY, APRIL 21, 1986.

BUREAU OF INDIAN AFFAIRS

WITNESSES

ROSS O. SWIMMER, ASSISTANT SECRETARY—INDIAN AFFAIRS

HAZEL E. ELBERT, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRIBAL SERVICES)

HENRIETTA WHITEMAN, DEPUTY TO THE ASSISTANT SECRETARY/DIRECTOR—INDIAN AFFAIRS (INDIAN EDUCATION PROGRAMS)

FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT)

RONALD L. ESQUERRA, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (OPERATIONS)

THOMAS A. STANGL, ACTING ASSISTANT DIRECTOR, FINANCIAL MANAGEMENT

TONY ITTEILAG, DIRECTOR OF BUDGET, DEPARTMENT OF INTERIOR

GERALD RISO, OFFICE OF CONSTRUCTION MANAGEMENT

FRANK LATTA, OFFICE OF CONSTRUCTION MANAGEMENT

WAYNE NORDWALL, OFFICE OF THE ASSOCIATE SOLICITOR FOR INDIAN AFFAIRS

SHIRLEY CROSBY, PROGRAM COORDINATION OFFICER, OFFICE OF TRUST AND ECONOMIC DEVELOPMENT, BUREAU OF INDIAN AFFAIRS

Mr. YATES. Good afternoon.

Mr. Swimmer, do you want to come up here with your bodyguards?

Mr. SWIMMER. I will hold them in reserve, if I can, and see what I can do for you.

Mr. YATES. Glad to have you here, Mr. Swimmer.

Show the hearing as coming to order.

This is the hearing on the budget for fiscal year 1987 for the Bureau of Indian Affairs, and appearing in support of that budget is Mr. Ross O. Swimmer, the relatively new Assistant Secretary and Commissioner of Indian Affairs. Do you have both titles now?

Mr. SWIMMER. Yes.

Mr. YATES. He is supported by Ms. Elbert, Deputy to the Assistant Secretary, Indian Affairs, Tribal Services; Ms. Whiteman, Deputy to the Assistant Secretary, Director of Indian Affairs, Indian Education Programs; Mr. Ryan, Deputy to the Assistant Secretary, Indian Affairs, Trust and Economic Development; Mr. Esquerra, Deputy to the Assistant Secretary, Indian Affairs, Operations. You have a lot of deputies, don't you? Mr. Stangl. Hi, Mr. Stangl and Mr. Itteilag.

Mr. Swimmer, your statement will go into the record at this point, to be followed by your biography and the biographies of Ms. Elbert, Ms. Whiteman, Mr. Ryan and Mr. Esquerra. You can proceed and tell us about the state of the Indian nations and those tribes that are not nations, and all other Indians.

[The statement of Ross O. Swimmer and biographies follow:]

STATEMENT OF ROSS O. SWIMMER
ASSISTANT SECRETARY OF THE INTERIOR FOR INDIAN AFFAIRS
BEFORE THE HOUSE APPROPRIATIONS SUBCOMMITTEE
ON INTERIOR AND RELATED AGENCIES
ON THE FY 1987 BUDGET REQUEST

APRIL 21 & 22, 1986

Mr. Chairman and Members of the Committee:

I am pleased to appear before you today to discuss the FY 1987 budget for the Bureau of Indian Affairs' programs.

The 1987 budget request reflects the growing role of tribal governments in the operation of reservation programs. Even though our budget has been designed to comply with the deficit reduction requirements of the Gramm-Rudman-Hollings Act, there is still an increase provided for the operation of those programs most directly affecting the Indian people.

The 1987 appropriations request of $923.7 million of which $862.1 million is for the operation of Indian programs is an increase of $8.5 million from the 1986 adjusted appropriation for program operations. Our request includes increases from the FY 1986 Base in Social Services, $1.2 million; Law Enforcement, $506,000; Self-Determination Services, $4.2 million; Business Enterprise Development, $1.2 million; Real Estate and Financial Trust Services, $4.6 million; Management and Administration, $1 million; Program Management (Construction) $500,000; Consolidated Training Programs, $1.4 million; and Loan Guaranty, $288,000.

The $295 million requested for the new budget activity of tribal/agency operations includes funding for local service programs planned and operated at the reservation or agency level and some other programs offering direct services to tribes and individuals. The consolidated funding of these operations will allow tribes more direct and immediated input in making local decisions concerning fund usage to meet current needs and will reduce federal restrictions.

In order to improve services for Indian children and reduce program duplication, we are proposing the transfer of responsibility for the services now provided under the Johnson O'Malley education program to the Department of Education (ED). Increased funding to provide these services is included in the ED budget request. At the same time we are proposing to move some Title IV education funding from ED to the BIA. This will place all programs affecting Indian students attending public schools under ED and move programs affecting BIA-funded schools to the BIA. This transfer of responsibilities will occur, in large measure, through reallocation of funds in the Congressional appropriations process. Because of the need to reform the operations of selected ED programs, changes to existing legislation will be proposed in due course. The amendments will ensure that tribal contractors and Indian organizations will continue to play a role in the delivery of supplementary educational services to Indian students. No authorizing legislation will be required for the transfer of funds for former Title IV programs into BIA.

Our request proposes an increase of $5.6 million in funding for the indirect costs of self-determination contracts, offset in part by a proposed reduction of $4.0 million in self-determination grant funding. We believe the increase in funds for tribal indirect costs in necessary to further the goal of having reservation programs operated by the tribes.

Some of the major decreases from the 1986 appropriation levels are accounted for by the transfer of the Johnson O'Malley program responsibilities, $22.1 million; reduced construction, $41.7 million; elimination of one-time payments of $6.0 million for emergency hay purchases and $7.5 million for payments to the Alaska Escrow account; and a general decrease of $12.0 million for Alaska operations.

At my confirmation hearings before the Congress several months ago, I said, "The Bureau of Indian Affairs should continue encouraging tribes to take more responsibility by contracting programs that are now run by the Bureau. An integral part of any government is the responsibility to raise money and spend it as is needed for the common welfare of its citizens. Much of the money tribes have access to is now spent by the Bureau instead of tribes. However, we must also realize that some tribes will not move as fast as other tribes toward self-government and we have to be patient. We need to move at each tribe's pace and be aware of the unique circumstances of each tribe. On the other hand, I believe we should encourage and stimulate movement of tribes toward self-government and self-sufficiency through regulations and incentives that reward the tribes that take on these additional responsibilities". The flexibility in making local decisions concerning fund usage to meet current needs as recommended in our new line item of tribe/agency operations will help the tribes to achieve those goals.

The following discusses the details of the changes in our FY 1987 request. The increase/decrease amounts are compared to the FY 1987 Base contained in our Justifications. It should be noted that the 1987 Base restores funding sequestered in 1986 pursuant to the Gramm-Rudman-Hollings deficit reduction legislation. Therefore, a "reduction" from the Base funding level may actually constitute an increase from the actual 1986 funding level.

TRIBE/AGENCY OPERATIONS

Total funding for Tribe/Agency Operations in FY 1987 is $295 million (3,713 FTE). The net decrease of $6,336,000 (+1 FTE) consists of a reduction of $6,336,000 (-32 FTE) for BIA programs in Alaska, a decrease of $4,000,000 for self-determination grants, and an increase of $4,000,000 (+33 FTE) which will be spread among programs for the benefit of Indian tribes based on their own priorities for funding.

EDUCATION

School Operations

Funding for school operations is being decreased by $3,999,000 (-211 FTE). The decrease consists of -$1,200,000 for non-recurring items included in FY 1986 related to academic standards (such as staffing adjustments and purchase of library books, periodicals, and media equipment) and a decrease of $2,799,000 for the Indian School Equalization Program (ISEP). The decrease in ISEP reflects the transfer of residential students to day school programs, changes to the Intensive Residential Guidance and Bilingual programs, and the continuing emphasis on adjusting appointments of school staffs to an appropriate number of pay periods.

Johnson O'Malley

For FY 1987 responsibility for services now provided under the Johnson O'Malley (JOM) program is proposed to be transferred to the U.S. Department of Education (ED). Funding for the JOM program, which serves eligible Indian students in public schools, will be consolidated with the public school program under the Indian Education Act. The Department of Education

will assume full Federal responsibility for Indian children attending public schools.

Continuing Education

The FY 1987 program reflects a decrease of -$1,939,000 for the Special Higher Education program (see Indian Education Act Funding, below) and a decrease of -$432,000 for operating grants to Tribally Controlled Community Colleges.

Indian Education Act Funding

For FY 1987, responsibility for selected activities in the Department of Education which benefitted children in BIA-funded schools will be transferred to the Bureau of Indian Affairs. These programs, funded at $9,500,000 in FY 1987, are special enrichment grants, educational services grants and pilot and demonstration grants. This shift will give the BIA responsibility for full funding of Indian students in BIA-supported schools. Responsibility for the ED Indian Fellowship program would also be transferred to BIA in 1987 to replace the BIA Special Higher Education Program. A total of $2,000,000 is provided for this program in 1987.

INDIAN SERVICES

Tribal Government Services

The FY 1987 program includes decreases in Community Services (-$79,000, -3 FTE) and All Other Aid to Tribal Government (-$127,000, -2 FTE). These decreases are the result of changes in Area Office priorities.

Social Services

The net increase of $1,190,000 consists of an increase of $3,833,000 for general assistance to needy Indians in FY 1987, an increase of $100,000 (+3 FTE) for the quality control program, and decreases of -$2,710,000 for grants to organizations under the Indian Child Welfare Act and -$33,000 (-2 FTE) at Area Offices.

Law Enforcement

Increased funding of $[illegible]0,000 (+12 FTE) will permit the hiring of additional criminal investigators to improve the rate at which on-reservation crime is prosecuted. It will also allow the Bureau to furnish equipment for detention centers which have recently been renovated (+$100,000). Area Office priority changes resulted in a decrease of -$94,000 (-2 FTE).

Self-Determination

The requested increase of $4.2 million for Self-Determination Services reflects an increase of $5.6 million to cover the indirect costs of new tribal contracts, an increase in technical assistance, and a decrease of $1.7 million for Small Tribes Core Management grants. The increase in funds to support new contracts reflects continuing progress in the Administration's efforts to encourage increased P.L. 93-638 contracting by tribes. The adjustment in the Small Tribes Core Management Program reflects a phasedown of the program to a maintenance level, and its phaseout in the Juneau Area.

ECONOMIC DEVELOPMENT AND EMPLOYMENT PROGRAMS

Employment Development

The FY 1987 request is reduced by $497,000 due to one-time FY 1986 funding of a grant to the Crownpoint Institute of Technology, and Area Office adjustments totaling a reduction of $9,000.

Business Enterprise Development

The FY 1987 economic development grant program will be increased by $1,068,000 to provide additional Indian Business Development Program grants to individuals and tribes. These grants provide 25 percent of the funding for economic development projects matched by 75 percent funding from the private sector. The individual grants will be approved at the Area Office level; and an increase of $101,000 (+3 FTE) is proposed to handle the additional workload.

NATURAL RESOURCES DEVELOPMENT

Forestry and Agriculture

The major decrease in this category is $6.0 million for the one-time cost in FY 1986 for emergency hay relief for livestock in North and South Dakota and Montana. Other decreases include Forest Development (-$3,750,000) and Fire Equipment (-$415,000). Water Policy Implementation (-$1,500,000) and Wildlife and Parks (-$110,000) are also reduced. The Forest Development program retains $4.4 million to continue the backlog elimination program started in 1977.

Minerals, Mining, Irrigation & Power

The 1987 program includes the reduction of a one-time amount for Hopi coal lease re-negotiation efforts (-$100,000) and an increase of $960,000 in special projects which will be used in support of the overall plan to correct oil and gas royalty payment problems in the BIA. This increase is offset by a decrease of $960,000 in minerals assessments. There is also a decrease of $353,000 in irrigation operation and maintenance funding.

TRUST RESPONSIBILITIES

Indian Rights Protection

The FY 1987 program has a decrease of $315,000 in Environmental Quality Services related to completion of hazardous waste site surveys. Other reductions include: -$1,020,000 in litigation support and -$350,000 in attorney fees; reductions in Alaska for historical and cemetery sites investigations (-$1,658,000, -20 FTE); deferral of some work involving subsistence and allotments in Alaska (-$700,000, -10 FTE); Native Group Grant payments (-$412,000) and land selection cost payments (-$750,000).

Real Estate and Financial Trust Services

The FY 1987 Real Estate Services program contains an increase of +$3,937,000 (+4 FTE) which includes about $3 million for cadastral surveys, mostly in Alaska, and $718,000 for Land Records Improvement. The Financial Trust Services program contains an increase of +$450,000 which includes an increase of +$150,000 to improve trust fund investment operations and +$300,000 to develop and implement a trust fund accounting system. An increase of +$202,000 is also requested for Trust Services, General, as a result of Area Office priority changes.

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FACILITIES MANAGEMENT

The reduction in funds for the operation and maintenance of existing facilities activity includes a savings due to demolitions (-$300,000) planned under the Construction Management activity, and Agency facility closings in Alaska (-$1,248,000). This reduction is partially offset by an increase (+$415,000) for operation and maintenance of newly constructed Bureau facilities.

GENERAL ADMINISTRATION

Management and Administration

An increase of +$1,048,000 and +11 FTE will finance an expected increase in costs of FTS, postage and other intra-governmental billings, travel and printing costs (+$428,000); improved fund control and program analysis (+$123,000, +3 FTE); a contract management system (+$166,000, +1 FTE); financial management system corrections (+$330,000); development of single agency classification standards and study of excepted qualification standards related to Indian preference (+$76,000); and Area Office adjustments due to priority changes (-$75,000, +7 FTE).

Employee Compensation

The proposed increase of $72,000 will be used to establish a chargeback system for Department of Labor billings for workers compensation benefits to the Bureau organization where the accident/illness occurred. This chargeback system will promote safety for the employees and produce expected monetary savings to the Bureau since managers will have greater incentive to improve their safety programs in order to reduce this expense.

ADP Services

The overall reduction is offset partially by increased funding (+$108,000) required to fully cover Central Office staff support costs. The reduction in Central System Support due to cost avoidance derived from "buy-out" of leased equipment (-$2,250,000) will be offset by proposed purchases of small ("micro") computers for pilot projects to enhance program/administrative operations (+$300,000), equipment for the Indian Integrated Resources Inventory Program (+$500,000), and equipment for Trust Fund Management (+$350,000).

Program Management

Of the +$500,000 increase, $200,000 will be applied to the Facility Safety Inspection Program to perform more frequent inspections through contract to identify life safety hazard projects in Bureau facilities and $300,000 to demolish Bureau facilities that are underutilized.

Consolidated Training Program

This increase ($1,350,000) will be used to recruit and train qualified Indians to improve the quality and efficiency of the services provided by the Bureau to tribal groups. To achieve this objective the Bureau will activate understudy, cooperative education, and in-service training programs for its employees. The funding will cover the developmental expenses such as: course fee/tuition, instructors, materials, and other specialized training/education costs. These programs will not be duplicative of those which may already exist outside of the Federal Government.

CONSTRUCTION

Buildings and Utilities

The FY 1987 request of $28,960,000 for Facilities Improvement and Repair will be used to correct unsafe conditions in existing Bureau facilities.

Irrigation Systems

The FY 1987 program contains $1,500,000 to continue funding for the Papago Irrigation Project, Arizona. Funds are requested ($1,000,000) for the Flathead Indian Irrigation Project, Montana, to rehabilitate the project's irrigation distribution system. Funding ($9,155,000) is also included for continuation of the dam safety program. This program includes providing early warning systems for ten projects and structural modifications on 13 projects. The request also includes funds for surveys and designs ($500,000) and engineering and supervision ($1,745,000) for Indian irrigation projects throughout the United States.

Housing

The FY 1987 request of $16,295,000 will continue renovation of existing homes for needy Indians on reservations and the general management of the program Bureauwide.

ROAD CONSTRUCTION

Project funds ($75,000,000) are included in contract authority allocations from the Highway Trust Fund administered by the Federal Highway Administration (FHWA), Department of Transportation, and are not included in the Interior Department budget. In FY 1987, the Bureau of Indian Affairs will continue to finance all costs of the Indian road construction program through this contract authority. These include funds for Central Office program management and for program supervision by the area/agency offices, not to exceed 5% of the total contract authority allocation. A total of 33 FTE/T is financed in this account for the field equipment pool operations which collect rentals as reimbursements for the use of BIA-owned heavy equipment used on FHWA projects. All other program FTE/T (682) will be available from the FHWA allocation account in FY 1987 to carry out work using the funding provided by the FHWA.

INDIAN LOAN GUARANTY AND INSURANCE FUND

The Indian Financing Act Amendments of 1984 authorized the Bureau to request funds for payment of interest subsidies on guaranteed loans, management and technical assistance on these loans, and to reimburse the fund for losses paid on guaranteed loans. The funds requested in FY 1987 will pay for one year's interest subsidy and for management and technical assistance in FY 1987. The expected level of total new loan guarantees is $30,000,000 in FY 1987.

ALASKA SAVINGS

In FY 1987 the budget proposes a savings of $12 million in Alaska to be derived by eliminating funding for agricultural extension, adult education, Indian child welfare (ICWA), small tribes initiative, road maintenance, minerals & mining, water resources, and facilities management. It also reflects a reduced level of activity in several other programs. The proposed savings will be partially offset by an increase of $2.5 million to accelerate surveys of Alaska Native allotments. Alaska has only one reservation; over 30 percent of Alaska Natives live in urban areas, and the remainder live in villages which can receive revenue sharing under the Alaska State law to meet their needs. Given the improvement in the State's economy which has benefited the Native economic status, the absence of large blocks of trust land holdings that the United States has statutory responsibility to fully manage, the absence of any tribal treaty rights to be protected, and improved Bureau efficiencies, the Administration believes that Alaska Natives no longer require the same levels of financial support that the Federal Government provided in the past. In the recent past, the State has taken on greater responsibility for serving Alaska Natives with educational and welfare assistance programs. It is expected this trend will continue and that the State will pick up other responsibilities to Natives as citizens of the State.

CONCLUSION

Mr. Chairman, this concludes my prepared remarks. My staff and I will be pleased to answer any questions you may have. Thank you.

BIOGRAPHICAL SKETCHES

ROSS O. SWIMMER, ASSISTANT SECRETARY—INDIAN AFFAIRS

Ross O. Swimmer, earned a bachelor of science and juris doctorate from the University of Oklahoma. He came to Tahlequah in 1972 as general counsel for the Cherokee Nation and was elected to this first term as chief in 1975, serving for a total to ten years. Until August, 1984 he was also president of First National Bank of Tahlequah. He has served as a member of the Oklahoma Economic Development Commission and on the Governor's Committee on Educational Reform. He has been president of the Cherokee Nation Historical Society, a member of the Oklahoma Health Sciences Foundation board, the Independent Sector board and the Oklahoma Advisory Committee of the U.S. Civil Rights Commission. He was co-chairman of the President's Commission on Reservation Economies.

Swimmer's wife, Margaret, is a practicing attorney in Tulsa. The couple has two sons, Michael, 13, and Joseph, 15.

HAZEL E. ELBERT, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRIBAL SERVICES)

Hazel E. Elbert has been in that office since 1981. A Creek Indian, she served temporarily in 1985 as the acting head of the BIA. She began her career with Indian Health Service; was a legislative assistant for Senator Dewey Bartlett for four years, and then returned to the BIA as a staff assistant to Forrest Gerard, Interior's first assistant secretary for Indian Affairs.

HENRIETTA WHITEMAN, DEPUTY TO THE ASSISTANT SECRETARY/DIRECTOR—INDIAN AFFAIRS (INDIAN EDUCATION PROGRAMS)

Henrietta Whiteman has been on the faculty of the University of Montana since 1972. A member of the Cheyenne Tribe, she is serving with the Bureau on an IPA. She has a Ph.D. from the University of New Mexico. She began teaching in 1955 and has lectured and taught about Indian education at Harvard, other universities and before many education groups. In 1982, she was named Cheyenne Indian of the year for her achievements in education

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FRANK A. RYAN, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT)

Frank A. Ryan has been a senior executive service administrator at the Department of Education since 1981. A member of the Gros Ventre Tribe, he is a graduate of Yale University and Harvard Law School. He served as the executive director for the President's Commission on Indian Reservation Economies. He has studied business and economics in Japan; worked for the Fort Belknap Tribal Management Team and spent time in the Montana Governor's office as an economic development specialist.

RONALD L. ESQUERRA, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (OPERATIONS)

Ronald L. Esquerra was formerly chief operations officer with the Council of Energy Resource Tribes. A member of the Chemehuevi Indian Tribe, he has served as an executive assistant to the Commissioner of Indian Affairs, been an area director for BIA, and was an associate commissioner with the Administration for Native Americans. He holds a Ph. D. in business administration with a major in management information systems from the University of Arizona.

SUMMARY OF STATEMENT

Mr. **SWIMMER**. Thank you, Mr. Chairman. That is a tall order. I also would like to introduce Mr. Riso, who is with me today for later discussion on the Office of Construction Management. That has been of concern to this committee, and certainly is a concern of

Mr. Riso and myself. This, of course, gives us the opportunity to review the budget.

The prepared statement which I have offered for the record pretty well outlines the highlights of the budget and what we propose to do this year. The people that you introduced, the four deputies, I have chosen to have an organization that can have a little broader management style, that being Deputy for Education, for Trust and Economic Development, for Indian Services, and for Administration, and it tends to fit a little better with the way I like to operate things instead of having simply a second or third layer of folks.

The budget that we present this year does a couple of things. First of all, we felt constrained to meet the deficit reduction targets and to submit a budget as part of this administration's overall budget objectives to meet the targets so that we would not have to experience the effects of another Gramm-Rudman.

We also believe that the budget sets forth our priorities and to the greatest extent possible the priorities of Indian country, with the concerns of the need to reduce the deficit and to come up with a reasonable plan of attack for the problems that we face. You will note that there are some issues this year that I know are of concern to the committee and Indian people, in general.

One is the Johnson-O'Malley transfer, the one I mentioned earlier deals with the Office of Construction Management, a few areas that deal with trust issues and administration, and then, of course, the issue that is out in Indian country now, the Navajo-Hopi issue that will be discussed sometime this afternoon, or later in the week. I really can't add a whole lot to the statement and would just as soon get into questions you might have.

FY 1987 BUDGET REDUCTIONS

Mr. YATES. All right. Let's get into the questions. I look at your budget, BIA is losing approximately $40 million from last year.

Mr. SWIMMER. Yes, sir.

Mr. YATES. Is that going to hurt you? Should I have you sworn first? I think that is a good practice to start. I hear these witnesses come in, witness after witness, and say "We can get along fine with this budget, we aren't hurt at all," maybe if they were sworn and subject to penalties of perjury, maybe they wouldn't be so quick to say that. I will let you get by with it. I won't have you sworn.

JOM TRANSFER

Mr. SWIMMER. Maybe I have a little broader perspective of it. As far as hurt or help, I am not sure that is the answer I can give. I think that I could probably spend two or three times what is being proposed in the budget, but as far as spending that money effectively or spending the money that we have now effectively, I am not sure that the $40 million reduction is going to cause me a serious problem in that, yes, we have to defer a few items. The one major reduction, of course, was the transfer of the Johnson-O'Malley to the Department of Education so that the money, as far as being there to help Indian students, is still in a budget.

Mr. Yates. I think we ought to give that back, don't you? You would like it, wouldn't you? I mean deep in your heart. I think maybe we will give it back, because in my heart I would like to give it back, too.

Mr. Swimmer. That is probably a good reason. Deep in my heart, I could defend it fairly well, but we don't know what the effects will be, but certainly there are some opportunities of doing some planning if it is transferred to the Department of Education and some things that might be innovative that hadn't been thought of before.

CONSTRUCTION CUTS

Mr. Yates. Except some things are liable to be lost in the transfer as well.

The other big cut is in construction, and I suppose that the fact that you don't have any money in here for Indian clinics and Indian schools—do you? In your budget?

Mr. Swimmer. We don't.

NEW SCHOOL CONSTRUCTION

Mr. Yates. Does that mean you don't need any new schools, you don't need any Indian hospitals or anything? That is IHS. Let's talk about schools, then. I will ask IHS that question when we get to them.

But it seems to me BIA knows about Indian clinics and Indian hospitals, as well. I take it, the fact there is no money in it doesn't mean that the state of Indian hospitals and clinics is not so good it doesn't require improvement.

Mr. Swimmer. I think that is true of much of our infrastructure. On the other hand, it is difficult for me to testify that we actually need new school construction when I look at the school facilities that we have now and the relationship that we have in our education programs. I am not satisfied, having been on the job a fairly short period of time, that we are doing all that we should be doing with the education monies we have available. I am just not sure new school construction at this time would be in the best interest of the people until we develop a more comprehensive Indian education program and decide which direction we are going.

I think that in some cases, we have perhaps misspent the money in the past that could have been spent more effectively if better planning had been done. And I am really disappointed from the past history of Indian education about the direction that the agency has been going.

Mr. Yates. Here you are coming over from a rather well-to-do tribe, the Cherokees of Oklahoma, you were the boss man there, supervising the construction of whatever the Cherokees wanted construction of, and here you are in BIA. Why can't we give you the same recognition and importance and funding that you had when you were Chief of the Cherokees for all the Indians so you could do as good a job for them as you did for the Cherokees?

Mr. Swimmer. I think that you can, but I would hope when I was Chief of the Cherokees that I did put a little bit of effort into the planning and didn't——

Mr. **Yates**. We will let you plan here. We will give you the money to let you plan.

Mr. **Swimmer**. I might need to defer for a year or so before I come up with a solution to the new school construction, because I really am not convinced that that is something we need in the budget right now.

Mr. **Yates**. Really? Did you by any chance read the testimony of the outside witnesses who came before us with their requests for schools? There still is a list of priorities, isn't there, for school construction?

As a matter of fact, you just issued a new one, and you want to build—let's see, the current list is a memorandum from the Bureau of Indian Affairs, Office of Construction Management, dated April 17, 1986, which is a fairly recent action. "Notice of School Construction Priority List."

And you say this: "The current list of school construction projects applies to fiscal year 1987 based upon the Bureau's criteria for Indian projects using unhoused students. A revised list is developed for each fiscal year." And so the BIA with the ranking for 1987 is, and the winners are, one, the St. Francis Indian School in South Dakota; two, the Turtle Mountain Middle School in North Dakota; and they say a review of the Oglala Community High School is underway as directed by Congress to determine whether or not it should be running. No other applications are ranked pending the development of a master plan.

Do you think we ought to put money in for St. Francis or Turtle Mountain?

Mr. **Swimmer**. Turtle Mountain is one that had burned a few years ago, and the students were being housed in other school property. I am not sure we can complete the planning effort we have there to justify construction funds for this year.

Mr. **Yates**. Do you have money for planning?

Mr. **Swimmer**. I think that we have some.

Mr. **Yates**. What about Two Eagle River and Rocky Boy? Last year, we put the money in, and we found they needed some more design work, so we withheld it until this year. Now the designs are complete. Shouldn't we fund those, too?

Mr. **Swimmer**. Those are schools the design did change on, and we went to a modular concept, and I think the plans are either complete or just about complete. They are the only ones that would be ready for construction.

Mr. **Yates**. According to this, the outlay effect for 1987 for Two Eagle River would be $2 million, and Rocky Boy, $2 million. For 1988—I guess that completes Rocky Boy—but for 1988, $2.5 million for Two Eagle School. Is there any question about the need for those schools?

Mr. **Swimmer**. I would defer to Henri Whiteman on this particular issue. Do you want to come up and address that?

Mr. **Yates**. Henrietta. I thought he said Henry.

Mr. **Swimmer**. That is short.

Mr. **Yates**. Henrietta, are you going to catch the devil if you tell me the truth and say the schools are needed?

Ms. WHITEMAN. I don't believe I am going to catch the devil, Mr. Chairman, but I can only address the programmatic and educational aspects. I am not in a position to talk about the facilities.

Mr. YATES. You don't know whether they are needed or not?

Ms. WHITEMAN. I happen to be a native of Montana, Mr. Yates, and I would be unable to answer you objectively about the need for the schools. I live down the road from the Two Eagle River School. They have managed over the past several years to establish an alternative program, which is consistent with the needs of the Flathead Nation of Montana.

I also happen to be familiar with Rocky Boy High School, which was the first Indian school district in the Nation. There is a strong culturally based curriculum there. In looking at the education in Montana, one has to look at the isolation factors and the fact five percent of the state's population is American Indian.

Consistent with Public Law 93-638, which stresses local control, I would say, based upon the needs as established and determined by both the Flathead Tribes and Chippewa-Crees, they have determined they need the schools. I believe they have the goals very well established from a programmatic point of view, without purporting to speak for my counterparts in facilities.

Mr. YATES. Have you seen the sites?

Ms. WHITEMAN. I have visited at Two Eagle. I have not seen the site specifically. I have not visited Rocky Boy, unfortunately.

Mr. YATES. Have you seen it?

Mr. SWIMMER. No.

ROCKY BOY HIGH SCHOOL

Mr. YATES. Is the construction man here? Would he have seen it? Mr. Latta? Have you seen Two Eagle and Rocky Boy?

Mr. LATTA. Yes, sir, I have.

Mr. YATES. What do they look like? Come up here, Mr. Latta. Let's see if we can lay the foundation for giving you some work.

Mr. LATTA. I think we can.

Mr. YATES. Okay.

Mr. LATTA. Rocky Boy is housed in the former, Tribal Office Building. It is unsuitable for an education program because it was built for office space, and the rooms are not large, they are cramped, they don't have the laboratory facilities that are needed or any of those special type rooms. I think there is a real need there for—

Mr. YATES. Are these schools 1 and 2 on your priority list?

Mr. LATTA. They are.

Mr. YATES. What about Rocky Boy?

Mr. LATTA. That is what I was talking about.

Two Eagle River, the facilities are housed in an old agency, what had been an agency at one time.

Mr. YATES. How many kids are involved in each of them?

Mr. LATTA. There are 56 now at Two Eagle River and 71 at Rocky Boy. Although we planned for more than that in the new facilities, they couldn't house any more than they have got now in the facilities they have.

Mr. YATES. If you have a new facility, what will it be?

Mr. LATTA. Rocky Boy, 100; and Two Eagle, 150. The facilities at Two Eagle are in very poor condition.

Mr. YATES. Are there public schools in the vicinity that could take care of the Indian population?

Mr. LATTA. We did a survey and checked it again just before the hearings this time. The public schools, we have statements from them, and we have visited those, they are at about capacity, between 95 and 100 percent capacity.

Mr. YATES. Without these children?

Mr. LATTA. Without them. In many places where the Bureau or the tribes have provided facilities, public schools did not include those where they built for their students.

Mr. YATES. Expecting BIA would provide the necessary facilities.

Mr. LATTA. True.

Mr. YATES. Is there any difficulty in getting staff for the schools?

Mr. LATTA. I don't think so in those places.

Mr. YATES. Is there?

Ms. WHITEMAN. No, there is not. Even though Montana is isolated, there are six units of the University of Montana system.

Mr. YATES. Do you still have the big sky out there?

Ms. WHITEMAN. It is very big. It is still there, and I hope it is there for eternity.

Mr. SWIMMER. Mr. Chairman, I think, from my point of view, I wouldn't disagree with anything that has been said, but I would suggest what I was trying to reach was the programmatic effort. I am not convinced that new schools are necessarily the thing that is going to provide a good education. I don't advocate housing kids in schools or in buildings that aren't suitable either.

But, on the other hand, we have, in the past, built an awful lot of new construction when we have not had an adequate program to put into that.

Mr. YATES. Is that the situation today?

Mr. SWIMMER. I think that is part of the situation.

Mr. YATES. Is it with respect to these schools?

Mr. SWIMMER. Henri is fairly new, too, in trying to develop a very quality education program.

Mr. YATES. I think it would be wonderful. I have been hearing that for years.

In each instance, they talked about quality education. I think that is wonderful. If you can do that for the Indian school, I will let you do it for the big schools of the country as well maybe. It is a tough, tough job. And here you have, according to Mr. Latta, you have the children housed in an old BIA building in one instance and an office building in the other. Does this make for quality education, or isn't that important, quality education?

Mr. SWIMMER. I think it is important, and I think the programmatic effort is important, too. We need to reach both.

Mr. YATES. What do you mean by a programmatic effort? What do you want to do for a programmatic effort? Do you want to plan it? How much time do you want? What do we do with the kids who need the education now?

Mr. SWIMMER. That is a challenge. We don't have a lot of time to get it done, and that is why I have asked Henrietta to come on board.

NAVAJO-HOPI RELOCATION

Mr. **Yates**. All of a sudden, it occurs to me that you can say that about all the Indian problems, we don't have a lot of time. I keep thinking of the Navajo-Hopi Indian Relocation Commission. We don't have a lot of time. We have until, what, July 6?

Mr. **Swimmer**. Yes.

Mr. **Yates**. What is going to happen on July 6th?

Okay. Mr. Latta and Henrietta, we will excuse you for the time being. I want to turn to the Navajo-Hopis for a moment.

Mr. **Swimmer**. I was afraid of that.

Mr. **Yates**. I know you are. So am I. Some people have come to me and said there is a possibility of violence taking place in the vicinity out there between now and July 6th, and certainly around July 6th. Have you heard the same thing?

Mr. **Swimmer**. Yes, we have. The possibility of violence there exists maybe—well, certainly to a greater degree than it might on some other reservation because of this issue.

Mr. **Yates**. I have asked staff to ask the Solicitor for Indian Affairs to attend this meeting. Is he here?

Mr. **Swimmer**. Wayne Nordwall is here from the Solicitor's Office.

Mr. **Yates**. With the threat of violence, what can we do to stop it, anything?

Mr. **Swimmer**. I can tell you a little bit about what we are doing.

Mr. **Yates**. You tell us first. Let me tell you one other problem that has come up. I don't know whether it is proper to put it as bluntly as I put it, but I am told that BIA police in the area, while coming from many tribes, in this instance are using police from the Hopi Tribe as policemen. Do you know anything about that?

Mr. **Swimmer**. I don't think we are using anyone except certified law enforcement officers.

Mr. **Yates**. It happens these were from the Hopi tribe?

Mr. **Swimmer**. It probably would be, because it is in Hopi country.

Mr. **Yates**. This makes the Navajo suspicious immediately, I am told. Whether this is true or not, I don't know. At any rate, I am told you are building a fence out there in order to protect the pasture.

Mr. **Swimmer**. Fencing has been built, windmills have been built. This is where the land has been cleared and we need a boundary. And one instance, Wednesday a week or so ago, a group of people were tearing down existing fences during daylight hours, and they were arrested.

[Recess.]

MAINTAINING LAW AND ORDER

Mr. **Yates**. We were talking about law enforcement. July 6th is going to come up. I had spoken to Ivan Sidney, the Chief of the Hopis. He says that they expect the deadline of July 6 to be maintained. Congress, last year in its Continuing Resolution, provided language that said there should be no evictions of the Navajo people unless there were accommodations made available to them.

I am told those accommodations will not be available for a year to 18 months.

Therefore, July 6 will come and go. Even assuming that recognition is given to the fact that the Hopis obtain title on July 6 to these lands, the fact remains it was the intention of Congress that there be no evictions, there is no place for the people evicted to go. How is that to be enforced?

Mr. SWIMMER. The time between now and July 6 is very critical because people use the July 6th date as the rallying point for those indicating a desire to cause trouble in the area and make a point on the relocation effort. It is our opinion, and I think by law, we are challenged with the responsibility of maintaining the peace out there. I have worked with both tribes and both our area directors and the law enforcement people, and believe that we can keep the situation under control. However, we expect demonstrations and things, but we don't expect the violence to occur. We are going to do everything we can to see that doesn't happen.

Mr. YATES. How are you going to do it? Are you going to have police out there?

Mr. SWIMMER. We do have.

Mr. YATES. How many BIA police will you have out there?

Mr. SWIMMER. We will have as many as it takes to do the job.

Mr. YATES. How many will that be?

Mr. SWIMMER. Hazel, what do we have now?

Mr. YATES. Come on up here, Hazel. You are not a stranger to this bench.

Mr. SWIMMER. The law enforcement program is under Hazel's management, and she and I work together on this issue and are alerted to it. I think she can give you an idea of what preparations there are, or at least what we are doing now.

Ms. ELBERT. We are in the process, Mr. Chairman, of gathering about 25 police officers from throughout the country who meet certain qualifications for this kind of activity so we can put them through what we feel is the necessary training they have to have if there should be some trouble.

Mr. YATES. Can you describe what those qualifications are and what training?

Ms. ELBERT. The training activity would have to do with riot control activity. We will make sure the police officers that we select have the right kinds of attitudes toward riot control and that kind of thing.

Mr. YATES. One question comes to mind. Will preparations of this kind provoke hostilities?

Ms. ELBERT. I don't believe so. We have to be prepared in the event something does happen, so we have to start somewhere. If we don't start now, the last minute is too late.

JULY 6 DEADLINE

Mr. YATES. Let me ask counsel a question. Is the July 6 deadline recognized by the court? Did the court establish the July 6 deadline, or is that established by congressional action?

Mr. NORDWALL. It was established by a congressional Act. The Act said that the Commission had to submit a relocation plan after the final partition line was drawn. The final partition line was drawn in 1979 and went to the Court of Appeals and was finally adjudicated in 1981. The 5-year period runs out July 6. It was set in the 1974 Act, as taking effect 90 days from the time the Commission submitted its plan. It submitted its plan in 1981.

Mr. **Yates**. Is the court order still in effect?

Mr. **Nordwall**. The partition line is. The Hopis have title to the property, it is just a matter of removing the people that don't belong there.

Mr. **Yates**. Do they have a right to evict the people without going through eviction proceedings?

Mr. **Nordwall**. That is an unanswered question. It would be our guess they would have to go through eviction proceedings.

Mr. **Yates**. Before this court?

Mr. **Nordwall**. Before the court. Public Law 99-190 limits action by the Federal Government. We would argue in court we couldn't use BIA police or U.S. marshals in order to evict Navajos. Whether or not the Hopis could go to court and urge the judge to order eviction is another question.

Mr. **Yates**. Could they—well, they couldn't. All right.

In your judgment, could they obtain an eviction order in view of the congressional language?

Mr. **Nordwall**. It would be highly unlikely, if the judge sees we are making a good faith effort toward relocation. We have this legislation on the books, we have got a statute that has already been upheld that says the Secretary is obligated to protect the rights and property of Navajos until they are relocated. The judge knows they can't be relocated until there is housing built, the money is now in the budget and the process is underway. It would be my guess if the Hopis attempted it, it would be highly unlikely a Federal judge would order eviction.

Mr. **Yates**. What else should I ask you? The Secretary has the obligation to maintain law and order out there to protect everybody, including both the Navajo and the Hopi. Will 25 qualified and trained law officers be adequate for the purpose?

Ms. **Elbert**. As we see it now, that should be adequate.

Mr. **Yates**. The deadline will come and go because there is nothing to be done except to go forward with construction of the housing and wait until they are built before we can do it. There are lots of outsiders coming to the scene?

Mr. **Swimmer**. I think that is the source of the greatest problem. It is not the two tribes. In talking with the two tribes, I think we have their commitment they are not going to create anything, but there are some outside groups apparently who have been invited in. I would anticipate demonstrations and things, but it is something we should be able to keep under control.

Mr. **Yates**. All right. Good luck.

Mr. **Swimmer**. Thank you.

Mr. **Yates**. Anything else from the counselor? Do we want to keep him here or let him go back to work?

Mr. **Swimmer**. I would like him to go back to work.

Mr. **Yates**. Thank you for coming. Oh, may I ask one more question? Would it serve a useful purpose to go to court and obtain an injunction against eviction, or should you just sit and wait?

Mr. **Nordwall**. At this point, it would be better to sit and wait. It would be unusual for us to go in and enjoin ourselves.

Mr. **Yates**. Not you, but enjoin others from coming in—

Mr. **Nordwall**. If they were to file, then we would oppose.

Mr. **Yates**. Fair enough.

We have asked you for a written opinion on this, haven't we?

Mr. **Nordwall**. I think so. I don't know, I just got called this morning real quick. If you were promised one, it will be forthcoming.

Mr. **Yates**. All right. Oh, yes, I know what it is now. I remember. I think we asked for an opinion as to whether the language in the Continuing Resolution supersedes the language of the original Act. Having put the language in, is its force sufficient to supersede the original Act which established July 6?

Mr. **Nordwall**. That raises the old question whether an appropriations act can be substantive legislation.

Mr. **Yates**. I would think——

Mr. **Swimmer**. Part of the language of the amendment of 1980 incorporated the requirement the Secretary would protect the right of property——

Mr. **Yates**. We are talking about the Continuing Resolution language last year. The Continuing Resolution is not considered as being an Appropriations Bill, I am told by the parliamentarian. If you come to an opposite conclusion, then the July 6 Act prevails, so it has got to have the force of law.

Mr. **Nordwall**. The limitation on the use of Federal funds obviously does. There wouldn't be any mechanism to enforce the July 6th deadline, which we thought was the intent of putting the language in that way.

Mr. **Yates**. Okay. Thank you.

STATUS OF NAVAJO-HOPI RELOCATION

Now tell us about what you are doing under your relocation effort. When last we had our hearing on this, all eyes were focused on you as being the agent for bringing peace and harmony and success to the relocation plan.

Now, is that in sight?

Mr. **Swimmer**. I am not going to tell you all is in sight, but I think we are making a lot of progress. It has been slow, we have had some bureaucratic kinds of delays, and it seems to be taking a lot of time to get it done, but we have elevated it. Essentially, what I did after that hearing was go to Navajo country and spend some time on the HPL with the Hopi and with the Navajo, and try to acquaint myself with the situation that was going on there. Admittedly, spending three or four days doesn't make one an expert, but it did enlighten me on some of the deficiencies, some of the counseling and developmental activities that were or were not going on. It did tell me there was a lot of confusion on the HPL with the Navajo familiies, especially among the elderly and those who were Navajo speakers.

Addressing that situation, when I got back to town, I made a decision to request from the Commission a memorandum of understanding that would allow my participation to a greater extent in the planning process working with the 230 or 240 families that we believe are still on the Hopi Partitioned Land. This was a far greater load than what the Act originally and what the Continuing Resolution had proposed. The law, as I understood it at the time, allowed the Bureau approximately $22 million which would be used to build housing. I didn't feel that I could do an adequate job of building housing in the abstract unless I worked with the families that were to be located in those houses.

So I decided that with a memorandum of understanding between the BIA and the Commission, it would give us the opportunity to get access to some of the Commission's work product, some of their contractors, especially the Hill organization that had done some of the planning and some of the counseling. That is essentially all that I wanted out of the MOU.

I then brought an individual on board to work directly under me to try and develop a counseling plan that could be effected on the HPL, with those Navajo families, someone who had the experience of working with relocation projects, community development and Indian housing and everything. So I did bring an individual on board and sent her out there to start working with our area office people and with the Commission.

The Commission did design the memorandum of understanding. I left the option open with them; if they wanted my road to be strictly home construction, I would leave it that way. If they would allow me an opportunity to work with the families, I would do that, if I had to do it in a greater role than what had been proposed by the legislation.

Since that time, and that has been about six to eight weeks ago, we have been attempting to develop the plan. We have developed a plan for the counseling and the interviews on the HPL and to work with the people there and have conducted a number of interviews. In fact, we had a number of families that had gone to the new land with us where we had taken individual families down, looked at the new land, and we are talking about home sites.

Mr. YATES. Excuse me one moment.

[Recess.]

STATUS OF NAVAJO-HOPI RELOCATION

Mr. SWIMMER. Following this initial contact that I made the day I was leaving the Navajo Reservation, I was alerted to the fact the bill had been introduced. Our staff people who had been working and some of the families I had visited that very week who at least appeared to me to be anxious to move to the new land and get the grazing back and have a house built, what have you, within the following week, several of them advised us they were told that they should wait. They indicated not only did they not have to move, but now maybe they could have other people move back on, they could extend their grazing, they could have virtually where they were in 1974 restored.

I recognized that wasn't the intent of the bill, necessarily, because we are still charged with the grazing plan on the HPL and the land won't carry any increase over what is there now. The new land offers new opportunity for the people. So I was a little disappointed in that.

We received word that some of the information came from the Chapter, some of it from the Navajo Tribe, everybody was told to just hold and don't do any moving or—because our idea was some of the families had desired to move and indicated the desire to move and had signed for the benefits, they would be the best ones to work with initially and to do the survey and personal work that would need to be done.

It was disappointing when the word came back they didn't want to do that. We still have families ready and somewhat anxious to move down there. But the problem in the last six weeks has been getting access to money to start doing the research work, the surveys with the families, and the social work type things that, I think, need to be done. We initially were told this work could only be done by the Commission because that was who it was funded for, that our funds were limited to building houses. So we could not program any of our money that had been budgeted to the BIA for counseling or social work or follow-up work, or what have you.

So we went to the Commission, and we talked to them about that and asked for their help in doing these things and in reading through the law, it appears all of these things we are talking about doing are things the Commission was charged to do anyway. So we made an assumption, apparently erroneously, the Commission could allocate those funds to the Bureau of Indian Affairs to conduct this preplanning and survey work for the families and counseling I think all of us are concerned about being done.

We were advised by the Commission's counsel this should go through a reprogramming effort. A week or so ago, we did meet with the staffs of the Appropriations Committees and talked about the process, we agreed on some parameters, and we got a budget in last week that proposed reprogramming of the Commission's funds to hire some social workers and pay for some of the travel to the new lands and really work one-on-one with the families until we were able to get the folks in a position where they could be settled and where a house could be built that would meet their particular needs.

So we are in that process now, and one of our concerns is because it has taken a while to get into this posture of being able to get the Udall-McCain contract amended to provide the kind of planning we ask for, to get the social workers hired, to go into the field and do the planning, our time is running fairly short. I think we are close to getting the proposed reprogramming through and getting the Commission to agree to fund some of these activities, but the closer we get to the July 6 date, because it is set up as a target date, we think it could be a problem in putting people in the field.

We need the money and we need to continue working with the families who even, regardless of Udall-McCain, are people who would have to resettle from where they are because they are not included in that proposal. We are anxious to work with those people and do that individual counseling and planning that has to be done for each one of those families in order to get this process underway.

STATUS OF UDALL-MC CAIN LEGISLATION

Mr. Yates. What is the status of the Udall-McCain?

Mr. Swimmer. I don't know. It has been set for hearing. As far as I know——

Mr. Yates. They had better act in a hurry. What about the other prospective legislation I have heard that looks to the exchange of land? Somebody said Senator Goldwater had a proposal. Have you heard of it?

Mr. Swimmer. I haven't heard of any particular exchange. One of the things that I had proposed as an alternative was the Big Mountain issue. That seems to be a very difficult issue within the Navajo Tribe, and to some degree, it is with the Hopi Tribe, as far as giving up any land there. But that has been determined to be a religious site that is very meaningful to the Navajo, and they talked about trying to avoid having to relocate people that lived directly in that area, that had a particular tie to it.

And in talking with the Hopi, they have indicated, to me anyway, a desire to work that out amicably with or without a land swap. They are not, I think, ready to give up on exchanging land but some way they could grant either long-term leases, or something. But anyway, they are willing to talk about it. It may be there would be some way of using Udall-McCain as a vehicle to accomplish that.

As far as the general Udall-McCain, it seems to be a little bit late to be going in now when we are talking about 250 or so families that truly need to have a better way of life than where they are and have an opportunity for a better way of life than where they are by resettling to the new land and getting out of the conflict, since over 1,000, well, 900 people have been moved. It is a little late to back out.

Mr. Yates. Staff tells me the Commission is going to ask for a reprogramming for the purpose you have mentioned, but there has been no official letter received.

Mr. Swimmer. That is unfortunate because I was told they had requested that last week.

Mr. Yates. They are coming in on Wednesday, and we will ask them at that time.

Mr. Swimmer. It has been a slow process.

Mr. Yates. I imagine it is much slower than you want.

Mr. Swimmer. Yes, sir.

Mr. Yates. I have here a copy of the memorandum of understanding between the Navajo and Hopi Indian Relocation Commission and the Secretary of the Interior, together with a letter of transmission, dated March 4, 1986, addressed to Peterson Zah by Assistant Secretary Swimmer. That may go into the record at this point.

[The information follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

RECEIVED
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OFFICE OF THE
CHAIRMAN
Chrm

MAR 4 1986

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Peterson Zah, Chairman
Navajo Tribal Council
P.O. Box 308
Window Rock, Arizona 86515

Dear Chairman Zah:

Please accept my thanks for your generous hospitality on my recent trip to Navajo-Hopi. I also wish to thank Claudine for her help in getting us acquainted with the HPL and her excellent interpreting skills.

As you know, I am committed to following the law as it is presently written which requires that the Relocation Commission and now the Bureau of Indian Affairs, move as expeditiously as possible to provide suitable homes for Navajo people off the Hopi land. As I mentioned to you, I believe this can be done with minimum hardship to the people, and, in fact, in most cases will provide an opportunity for Navajo people to continue their traditional way of life. For your information, I am enclosing a copy of the signed Memorandum of Understanding (MOU) between the NHIRC and the Bureau of Indian Affairs.

At our meeting you told me that the Navajo Tribe had offered approximately 600 homesites on the Navajo Reservation which were available for relocatees in need of a homesite or, in some cases, grazing permits. I believe you also stated that anyone desiring a homesite at the recently acquired Paragon Ranch would be given a site upon request. The sites at Paragon would be primarily for people seeking future job opportunities at the coal mine to be established there.

It is extremely important for me to receive the exact location of the 600 sites that are available along with information on how many would include grazing units, number of animal units allowed, names of surrounding family members and other relevent information a relocatee might need to help him or her in selecting a site. Because of the need to get to work immediately on the 1215 families off the HPL as well as the 238 still on, we need this information by the 10th of March, if possible.

Claudine told us that she had a list of names and census numbers of approximately 200 families who she considers to be residents of HPL that are in addition to our count of 238. She agreed to give me a list of these people along with location data but I had to leave town before she could get me the list. Would you please mail the list by return mail so we can get in touch with these people to help us plan the moves of other families that might be relocated?

2.

I recognize the difficult time you are having with this matter but I urge you to do everything you can to defuse the potential confrontation between the two tribes in July and to continue your efforts of using legal means to seek any changes you might want to the Relocation Act. In the meantime I will do everything possible to make sure the Navajo family who has to move from Hopi land is treated with respect and afforded the opportunity to live in a manner desired.

Thank you for your help and consideration.

Sincerely,

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Enclosure

Copy sent to:
Congressman Yates
Congressman Udall
Congressman McCain
Senator McClure
Senator DeConcini
Senator Goldwater
Ralph Watkins

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
AND
THE SECRETARY OF THE INTERIOR

PURPOSE

In order to clarify the Commission's and the Secretary of the Interior's duties and responsibilities under the Act of December 7, 1974, as amended, 25 U.S.C. 640d et seq. and the Act of December 19, 1985, the parties agree that between themselves their respective responsibilities are as set forth herein.

DEFINITIONS

1. "Commission" means the Navajo and Hopi Indian Relocation Commission.

2. "Secretary" means the Assistant Secretary, Indian Affairs.

3. "Planner" means the Commission's present contract planner, CH2M Hill, or its successor.

4. "Plan" means a written report by the Planner performed pursuant to a Task Order to the Planner's Master Contract with the Commission. A Plan is a written feasibility study. The Plan must be in greater detail and more definitive than "appraisal level", but does not have to meet the standard of a "detailed plan". A plan requiring locations is adequate if the points located are within 1/4 of a mile of the actual on the ground location. As an example of the detail required, a photograph type depiction of the exterior of a dwelling from 50 yards would meet a requirement of the location and description of a dwelling. Monthly interim written reports with associated maps and supplemental data are required to be submitted to the Commission and the Secretary.

5. "Master Contract" means the Planner's existing contract with the Commission to perform studies and plans to facilitate the relocation of Navajo individuals from the Hopi Partitioned Lands.

6. "Task Order" means a requirement under the Master Contract for the Planner to perform work and produce a written report.

7. "Scope of Work" means the description of the work to be performed by the Planner pursuant to a Task Order.

8. "Survey" means a written report documenting and analyzing the results (and grouping the Relocatees that desire to live as neighbors) resulting from the Planner's personal interviews, utilizing the required questionnaire attached to and incorporated by reference into the Task Order, of each of the Navajo heads of households presently residing on the Hopi Partitioned Lands who are entitled to be relocated to the New Lands recently added to the Navajo Reservation. The survey will collect the relocatees' views on all significant issues related to relocation including the relocatees' views on where houses should be built, what types of houses are desirable, views on grouping and the size of the groups of houses, identification of preferred neighbors to be included in housing groups, identification of preferred neighbors who now live on the Hopi Partitioned Lands and those who do not presently live on the Hopi Partitioned Lands but who are entitled to a replacement home under the Relocation Act, the preferred infrastructure such as the types and location of water facilities, preferred grazing methods, identification of areas on the New Lands where the Relocatees desire to live, and related issues. The survey will also include a presentation of the options available. The Survey will further set forth the advantages and disadvantages, including short and long term financial costs to the individual Relocatee associated with the options.

9. "Notice to Proceed" means a written order by the Contracting Officer to the Planner to implement a Task Order.

10. "Contracting Officer" means the individual possessing a contract warrant and is authorized to execute modifications to the Master Contract and to expend Government funds for that modification.

11. "Deliver to the Secretary" means to transmit by the fastest means practical under the circumstances. Brief items will be transmitted by telefax or similar means. Lengthy items will be transmitted so as to be received by the Secretary on the next business day by next day mail.

12. "Key Personnel" means employees of the Planner that are professionally qualified in the field for the work required by a Task Order and who are to personally supervise or perform the required work.

13. "Relocatees" means the Navajo individuals presently residing on the Hopi Partitioned Lands for which the Secretary is required to construct replacement dwellings under the Relocation Act.

14. "New Lands" means the 250,000 acres of private lands recently acquired by the Commission and added to the Navajo Reservation and the 150,000 acres of the Navajo Tribe's fee lands to be taken in trust by the United States for the relocation of the relocatees.

15. "Contract Action" means the process of acquiring a Plan. A Contract Action will include the following steps: the Contracting Officer and the Planner will meet within 5 calendar days of the Contracting Officer's request for a meeting. The Contract Officer will inform the Planner of the Plan desired. Within 7 calendar days of the initial meeting, the Planner and the Contractor will develop a draft Scope of Work, including the time within which the Plan must be completed after issuance of the Notice to Proceed, and deliver the Draft Scope of Work to the Secretary. Within 5 calendar days following receipt of the Secretary's revisions to the Draft and the proposed delivery date of the Plan, the Contracting Officer will deliver to the Planner the Scope of Work. Within 5 calendar days thereafter the Planner will deliver to the Contracting Officer and to the Secretary a proposal to perform the Scope of Work and a list of the Key Personnel. Within 5 calendar days of receipt of the Secretary's revisions to the Scope of Work and his views on the Key Personnel, the Contracting Officer and the Planner will negotiate a price for the work. Immediately following the negotiation, the Contracting Officer will deliver to the Planner the Task Order and, after telephonic consultation with the Secretary, issue the Notice to Proceed.

UNDERSTANDING

A. SURVEY

The goal is to achieve the voluntary relocation of the Relocatees to the New Lands in accordance with the applicable law in a manner that, consistent with their existing or desired life styles, the Relocatees can be economically self-sufficient to the maximum extent feasible given the limitations of the available resources. Additional consultation with the Relocatees will facilitate the accomplishment of the goal. Accordingly, the Commission and the Assistant Secretary will jointly develop a survey instrument that will include an options document and a questionnaire. The survey instrument will be used to solicit from the relocatees information that the Secretary and the Commission will use in developing and implementing further planning and the relocation. The Task Order for the Survey will require that each Relocatee head of household be interviewed if possible, specify the method for conducting the interview, and provide the conditions under which follow up interviews will be required. The Commission will initiate a Contract Action to acquire a Survey Plan from the Planner within __ days of the execution of this Agreement.

B. POST-SURVEY

Following receipt of the Survey Plan, the Commission will visit the Secretary and together they will develop the requirements for the next Plan to be furnished by the Planner.

C. RANGE MANAGEMENT PLAN

This successful relocation of the Relocatees requires the identification of the specific sites for the location of the Relocatees' homes. The identification of the sites for these homes requires matching the housing site to the grazing area to be used by the Relocatee who will have grazing rights on the New Lands. The Navajo Partitioned Lands Office, Navajo Area Office, Bureau of Indian Affairs, on behalf of the Commission, has made a preliminary identification of grazing areas and relocatee home sites on the former Wallace Ranch portion of the New Lands. The Bureau of Indian Affairs preliminary plan is based on a management plan that is significantly different from the grazing methods the Relocatees presently use. Whether the preliminary range management plan, and hence the home site locations, can be implemented is dependent of the results of the Survey Plan. While awaiting the results of the Survey Plan, the Commission within __ days of the execution of this Agreement will initiate a Contract Action with the Planner for a Range Management Plan for the remaining portions of the New Lands. The Scope of Work for the Range Management Plan will include a requirement for the following alternatives: (a) separate pastures, both fenced and unfenced, for each Relocatee who will have grazing rights on the New Lands and desires to graze his animals as he now does; (b) separate pastures within a range unit where several Relocatees will graze their animals in common and rotate their use among the pastures permitted; (c) other techniques that are proposed as alternatives in the Survey Plan documents. The Range Management Plan will be supplemented as a result of the determinations following the receipt of the Survey Plan.

D. ROADS

The location of roads traversing the New Lands to connect the Relocatees with access to stores, medical facilities, etc., must precede relocation of the Relocatees. The Commission will initiate a Contract Action with the Planner within __ days of the execution of this Agreement to locate roads on the New Lands. The Task Order for the Road Plan will require that it be developed simultaneously and in conjunction with the Survey Plan and the Range Management Plan and display alternatives that mesh with the alternatives and options displayed in those other Plans. The Task Order will require that the Road Plan identify which alternative roads can be quickly made available by grading and drainage, and still provide access except for limited intermittent closure due to brief periods of inclement weather.

Additionally, the Road Plan Task Order will identify the other alternative road alignments that cannot be quickly opened and those which require relatively expensive efforts and longer construction time. Further, the Road Plan must provide appraisal level estimates of construction costs for the individual roads and the entire road system. The Task Order for the Roads will identify prospective local sources of materials that can be used to construct the roads, the type of road that these materials can support, and local or nearby sources of aggregate and other necessary construction materials and the potential locations for crushers to produce materials to construct the roads where such materials would be required.

E. WATER

The identification of sources of domestic water must be identified in conjunction with the Survey and Range Management Plans so that the Relocatees will not be required to haul water. The identification of these sources is a prerequisite to the identification of the Relocatees' replacement homes. Within __ days of the execution of this Agreement, the Commission will initiate a Contract Action with the Planner to acquire a Water Plan. The Water Plan must include alternatives that meet the alternatives and options contained in the Survey Task Order. The Water Plan Task Order must include as an alternative the provision of domestic water through use of wells driven by windmills and cisterns to provide water when the windmills are not active. The windmill alternative in the Water Plan Task Order must provide that each well will be used by less than 25 persons per well. The Water Plan will not require the construction of test wells or production wells unless ordered by a modification to the Task Order. However, the Task Order will require the Planner to notify the Contracting Officer when the Planner perceives a need for such test or production wells.

F. HOUSING CONSTRUCTION

The Secretary will construct the housing for the Relocatees and construct the roads required, up to the limit of funds appropriated and available, when the Plans described herein are completed, the requisite decisions are made following the analysis of the Plans, and the requisite infrastructure is near completion in order that the houses will be available at the time that the necessary infrastructure is available.

G. AMENDMENTS

This Agreement will be amended from time to time as conditions warrant.

H. SECRETARIAL REQUESTS FOR PLANS

The Commission will initiate a Contract Action within __ days of receipt of a request from the Secretary for a Plan not covered by this Agreement.

I. MASTER CONTRACT RENEGOTIATION

Within __ days of the execution of this Agreement, the Contracting Officer will meet with the Planner and renegotiate the Master Contract, if necessary, to determine whether the Planner will perform the Task Orders contemplated by this Agreement.

J. CONSISTENCY WITH APPLICABLE LAWS

The provisions of this agreement are premised on the understanding that existing law is a material provision of it. In the event that a portion of this Agreement is inconsistent with applicable law, then that inconsistent provision of this Agreement is a nullity. In that event, the Commission and the Secretary will implement the provisions of this Agreement to accomplish its intent and spirit and incorporate into the agreement the applicable law.

K. LIMITATION TO AVAILABLE FUNDING

The responsibilities detailed in this Agreement are subject to available funding. The Commission will give priority in the use of its funding first to providing housing benefits and second to implementing this Agreement.

FEBRUARY 25, 1986 Dated	Ralph A. Watkins Jr CHAIRMAN NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
February 25, 1986 Dated	~~February~~ Hawley A VICE CHAIRMAN NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
February 25, 1986 Dated	Sandra L. Massetto COMMISSIONER NAVAJO AND HOPI INDIAN RELOCATION COMMISSION
2/25/86 Dated	Ross O Swimmer ASSISTANT SECRETARY INDIAN AFFAIRS DEPARTMENT OF THE INTERIOR

Mr. **Yates**. Do you have adequate funding for the law enforcement that is necessary?

Mr. **Swimmer**. I believe we do.

Mr. **Yates**. Tell me why BIA law enforcement officers are taking photographs of people on the Hopi Partition Land?

Mr. **Swimmer**. I am not aware that they are.

Mr. **Yates**. I am told by three or four sources that they look like regular "G" men. They have uniforms, wearing dark glasses and everyone that comes along, they take a picture of them. Will you call off the photography? It is very disturbing I am told in the area.

Ms. **Elbert**. If it is happening.

Mr. **Yates**. It is kind of an overbearing kind of approach. While some police officers have this, I am sure the BIA doesn't have it. At least you want to assure they don't have it, don't you?

Ms. **Elbert**. I will check on it.

[The information follows:]

Law Enforcement Photographing

We are not aware of any systematic photographing by law enforcement personnel of individuals on or near the Hopi Partitioned Land. There have been two incidents in the recent past when enforcement personnel took photographs for legitmate law enforcement purposes. One involved the arrest of four (4) individuals destroying property at the partition fence line and the other incident involved individuals attemting to block a public road. The photograph procedure guarantees that the rights of all individuals are protected and is a standard procedure.

RELOCATION COMMISSION

Mr. **Yates**. All right. Now to the $64,000 question, should BIA assume total responsibility for the relocation? Do you want to think about that for ten seconds?

Mr. **Swimmer**. I thought you were going to say ten days. I have thought about it a great deal.

Mr. **Yates**. I know you have. I asked you about it months ago, at least 60 or 90 days ago. Because I kind of think that you do a better job than the Relocation Commission.

Mr. **Swimmer**. I appreciate that.

Mr. **Yates**. What do you think?

Mr. **Swimmer**. The process is, to say the least, very complex. My reaction to the resettlement of the people on the HPL was that something better could be done than what was being done, and I asked for the opportunity to do that with the Commission. The Commission has a staff of, I am not sure how many people, 50 or 60, and I assume they are doing something, I am not sure what it is, but I think they are collecting data, they are working with the families no longer on the HPL. They have responsibilities to those people who have been moved, their task is, I am sure, very complex and very involved. I am not sure stepping into their shoes at this time is something that I would particularly enjoy doing.

Mr. **Yates**. I am sure you wouldn't enjoy it. That is not the question. The question is whether you would do it better than they would.

Mr. **Swimmer**. That would be speculative. They have been in business for quite a number of years and probably will be for a few years hence, and I don't know how long I will be here.

Mr. YATES. Of course, BIA has been in business longer than they have.

Mr. SWIMMER. Well, this is a particularly difficult project.

Mr. YATES. It sure is.

Mr. SWIMMER. And I feel like bringing in some people to the project that are uniquely qualified to handle and work with people involved in relocation. If it had been done earlier, perhaps it would have moved the project along a lot more.

Mr. YATES. I hear Ms. Helmer is doing a good job out there, but experiencing some frustration. Has she reported that to you?

Mr. SWIMMER. I would say that is accurate.

Mr. YATES. Is she going to stay, or is she going to go?

Mr. SWIMMER. Right now she has been a volunteer. Maybe one day I can get her on the payroll. But it is a little difficult to do those things, too. She has worked very diligently, and she does get frustrated at the slowness of things happening. Part of it is the reprogramming of the money. Working with some of the staff on the Commission is a little slower than what she would like to have happen.

WATER PROBLEMS ON NEW LAND

Mr. YATES. Tell me about the water problem on the new land. Somebody told me that there really is a very serious question as to whether the water is still potable. In discussions I have had, I am told the rock formation is supposed to bar any of the polluted land from affecting the water. Others have said that the materials are radioactive materials that are heavy and have gone through the rocks and are hitting the water.

Can you tell us what the situation is? Who has decided or investigated this question and concluded that the water is useless?

Mr. SWIMMER. I think it depends on where you are on the new lands, and I am not sure—to my knowledge, I am not aware that conclusion has been made one way or the other. I think there is a leaning by Indian Health Service and by our people at this point, the water is potable, and there is no danger in it. Now I am not aware that we have done that much site testing, well testing, or drilling to see how the water is.

Mr. YATES. Do you do it yourselves, or do you hire outside experts for it? How is it done? Have you called the Geological Survey in to look at it, for example?

Mr. SWIMMER. They would be involved and Indian Health Service would be involved in doing the testing, and there is money, I believe, in the Commission's budget to do some actual test well drilling so we can get water samples. But I think USGS does have some information on it, too, but as far as I know, there is no determination the water is bad. I have heard that, too, but I think I have heard a lot of things about why we shouldn't use the new land for construction of the houses for the people, and most of it——

STATUS OF PILOT PROJECT

Mr. YATES. What about your pilot project? You are supposed to have a pilot project proven out before the July deadline.

Mr. **Swimmer**. I am hopeful we will be able to begin house construction very soon. That could be a week to two weeks. We have located a site that is suitable to, for one of the families that have indicated a desire to move. We have been working with them on the planning for the house and what it is going to take to be satisfactory to these families involved.

Mr. **Yates**. Are you going to have enough land for both people and sheep?

Mr. **Swimmer**. We will, according to the priority that is set. We think, anyway, there is some question about the numbers of people who would be eligible for the new land using the 1980 definition of eligibility and priority. Essentially, the new land was acquired to permit anyone officially a resident of the HPL after a certain date in 1980 to relocate there, and looking back at the numbers you have of grazing permits from that date and the current residents of the HPL, we think we can do that, but there was no census taken at that time.

Mr. **Yates**. We have gotten a letter dated April 17, signed by Mr. Saul, in which he talked about eligibility for resettlement, and in the course of that paragraph, he states another factor that must be considered in the increased number of families you are working with is the capacity of the new lands to accommodate Navajo families in even a sub-subsistence life style. The population supports the analysis for new land being developed. It states the new land can support about 140 families and so forth. How many families are you going to put on?

Mr. **Swimmer**. That statement is not true. That statement begs the question of how they determine grazing units and how many people might have sheep. If you were to do an economical grazing unit, it would actually support a family of four, you would need to have, I have been told, as high as 300 to 400 head of sheep. If that is the case, we would put maybe fewer than 100 people on the new land.

It is our belief that affording the people the opportunity to increase some of their grazing from what they now have at a very minimum and obtain what they have on the new land that we could resettle 200 to 300 people with grazing privileges on the new land; that we would resettle additional people, and that number is still in question as to how many more, but they would not have grazing permits, they would have home site leases on the new land and be situated as extended family members of those who do hold grazing permits.

We have a number of people that are on the HPL now who have no desire to have 100 or 400 head of sheep, some of them have 20 or 30 heads of sheep, and they are heads-of-household, and some are elderly and some don't want that many sheep. So we have to arrange the grazing units in a way that meets what the requirements are.

So you can't just say 140 families is all it would support. It won't support that many if we are actually going to provide a full economical unit that would be self-sustaining. But they are certainly living at below subsistence now, and I think the new land does offer an opportunity to improve that, although there will be a limit to what they can have.

Mr. **Yates**. Have you replied to the Navajo letter of April 17?

Mr. **Swimmer**. No, I haven't.

Mr. **Yates**. Would you send us a copy when you do?

Mr. **Swimmer**. Sure.

[The information follows:]

APR 23 1986

The Honorable Peterson Zah
Chairman, The Navajo Nation
P.O. Box M
Window Rock, Arizona 86515

Dear Chairman Zah,

Your letter of April 17th raised many concerns regarding the Task Force's working paper on proposed plans for the New Lands. Much of the letter raises objections to, rather than suggestions for, the development of the New Lands. While it is important to learn of your objections to various aspects of the project, it would be more helpful to receive proposals for alternative strategies for meeting the needs and desires of the people now facing relocation on the New Lands. Given the way each piece of the project weaves into another, it would be most useful if you would develop proposals that are comprehensive in scope, rather than criticizing select pieces that must dovetail.

Your first concern appears to be the formalization of expectations and responsibilities between Navajo Nation and the BIA with respect to the New Lands relocation efforts. Your staff has consistantly reminded the BIA that relocation is the exclusive responsibility of the U.S. government. It was on this basis that your staff insisted on new funding sources to enable Navajo Nation's participation in the HPL field survey. Your human service workers will be an integral part of the field teams during the consultation process on the HPL. This goes much further than a formal process of consultation with the Nation.

When first authorized to construct replacement homes on the New Lands, I found that the Relocation Commission had undertaken extensive consultation meetings with the Nation over several years. I also found that there had not been adequate consultation with the people living on the HPL. Thus, I have instructed my staff to focus their energies on the field consultation process and the development of detailed plans with specific families who face relocation. I have also instructed them to meet with your staff on a monthly basis to share proposed plans and to solicit alternative proposals that enable us to implement Congressional directives.

With respect to eligibility to move to the New Lands, our intent is to adhere to the priorities and guidance provided by Congress. That guidance is clear; the New Lands are to be used solely for the benefit of those Navajo families residing on the HPL as of July 8, 1980, who are awaiting relocation. You suggest that the Act be interpreted to include Navajo heads of household who moved from the HPL prior to July 8, 1980, and the Kabinto evictees. This is not possible without new legislation and directives from Congress.

You raise many questions as to how the BIA will determine eligibility to move to the New Lands. The BIA is not authorized to certify heads of households as eligible for relocation. That is clearly the role of the Relocation Commission. We have requested from the Relocation Commission a list of heads of households eligible to move to the New Lands. Until the Relocation Commission provides the BIA with such a list, the BIA will proceed with the priorities established by Congress in the appropriations language, namely the relocation of those families currently residing on the HPL.

Many of the relocatees currently residing on the HPL went to live near family members and are reluctant to move unless their extended family can be accomodated on the New Lands. As you note, some consideration is being given to allowing a small number of extended family members to share a relocatee's homesite lease. The eligible relocatee would select those family members to share in his/her homesite. No criteria for such selection would be imposed upon the eligible head of household; the only limitation would be on the number of additional homesites provided for such purposes to each eligible head of household. Due to Navajo Nation's concerns regarding the 5-acre homesite lease proposal, the Task Force is revisiting the issue of homesite size to determine if the concerns of both relocating families and the nation can be served.

Your letter also raises questions concerning proposed plans for issuing permits and managing grazing on the New Lands. Survey work by the NHIRC staff (referred to in the CH2M Hill report "New Lands Options and Policy Choices", Dec. 1985), found that a high percentage of HPL residents oppose or disfavor the "planned grazing method" previously planned for the New Lands. In view of the need for more intensive consultation with relocating families and substantiated opposition to that grazing method by relocating families, that method will not be imposed. After consultation with those families, we will discuss more detailed plans.

As to your suggestion to establish grazing rights on the basis of the "old Navajo permits", this would mean that many HPL households who now have permits would not be permitted to continue grazing on the New Lands. Our proposed approach will enable both current permittees and most persons with an "old Navajo permit" to graze. Limiting grazing permits to "old Navajo permittees" would constitute a serious disincentive to relocate for many households now residing on the HPL.

Finally, I share your concerns that appropriate infrastructure be provided on the New Lands. No families will be relocated without a source of water and energy in place. The actual wishes of relocating families as regards type of services will be determined during the fieldwork process. We are working closely with Indian Health Service to facilitate their role in supplying health, water and sanitation servies in the New Lands. We will continue to work towards the goal of planning and providing infrastructure on the New Lands in cooperation with the Relocation Commission. As you are probably aware, the impact monies potentially available to the school district in the New Lands host community, Puerco Unified School District, cannot be requested until actual numbers of enrolled students are established. Monies for Indian Health Services (IHS) and social services related to New Lands relocatees must go through the appropriate funding process in their relevant agencies. I will provide support for these requests in any way possible; I have not, however, received funds for these purposes.

Despite areas of disagreement which apparently exist between us regarding certain aspects of the proposed project structure, I trust that a common concern for the Navajo people living on the HPL will encourage our agreement in others.

Sincerely,

/S/ Ross O. Swimmer

Ross O. Swimmer
Assistant Secretary - Indian Affairs

FUNDING FOR HOUSING AND DEVELOPMENT

Mr. YATES. How much money is going to be required for additional housing or development needs on the new land? Do you know that yet?

Mr. SWIMMER. We, the Bureau of Indian Affairs, had estimated we need approximately $12 million, and I am not sure that that is a firm figure, but somewhere between $12 million and $15 million to complete the development of the new land. That is with minimum road work. That doesn't include hard surfacing, but that is to cut the roads in, add new roads wherever we need to, to home sites and to grazing areas, provide water and electricity and the basic infrastructure. On top of that would be the cost of the housing—an average unit cost of around $50,000 per house. So we are looking around $10 million for the 200 houses. That would be for the residents of HPL today. Between the Commission and our budget, that money would be available.

Mr. YATES. Let's get back to Johnson-O'Malley. I think we have explored the Navajo-Hopi situation, and we will go into it further, of course, on Wednesday when the Navajo-Hopi Relocation Commission comes.

JOHNSON O'MALLEY

Have the Department of Education's proposals been submitted to Congress yet?

Mr. SWIMMER. The authorizing language?

Mr. YATES. Yes.

Mr. SWIMMER. I don't believe they have.

Mr. YATES. So we have to act without having that legislation. I think perhaps we won't adopt that. What organizations have you made under the MOA, memorandum of agreement, between Assistant Secretaries——

Mr. SWIMMER. We presented to you and have talked to your staff about the Office of Construction Management that was on request from the committee to try and do something to straighten out the facilities, improvement repair projects, and the operation and maintenance of all of our facilities.

What we were requested to do is enter into a memorandum of understanding or agreement between the two internally, so that Mr. Riso's shop would develop an Office of Construction Management, that then could be turned over to the Bureau of Indian Affairs once it had been fully implemented and staffed and had the ability to conduct the construction activities that were needed to do, to spend money with O&M, and FI&R.

That agreement was entered into, I believe, in February; the project is being carried out now. We have staffed it in Albuquerque. We both believe that this is very important, and it became a high priority. He and I both came on about the same time, and we decided that it was about time to take some action.

I think the committee had talked to us about it long enough. So we are both very much in favor of the action that is being taken now, and I believe that it does give us the ability to develop a very high quality program of construction management and operation and maintenance within the Bureau of Indian Affairs, that is something that has been needed for years.

CONSTRUCTION PRIORITY LIST

Mr. **Yates**. We talked about construction a few moments ago. Is there an updated priority list for new construction?

Mr. **Swimmer**. For new construction?

Mr. **Yates**. Yes.

Mr. **Swimmer**. No, I think the list that you had would still be the current list.

Mr. **Yates**. That covers the St. Francis and Turtle Mountain—is that enough?

Mr. **Swimmer**. Considering the budget we are proposing, what we would like to spend in light of trying to be responsible with the budget, we don't think we are going to get any further than that.

STATUS OF FACILITIES INVENTORY

Mr. **Yates**. What is the status of updating the facilities inventory?

Mr. **Swimmer**. It is in process. And what I mean by that is that when I came aboard, it was obvious to me we did not know where we were with facilities, including repairs. We didn't know the condition of the buildings. The last time a comprehensive survey had been done was about five years ago, and several people questioned the validity of that.

So what we have started is a project, as of a couple months ago, to involve the Bureau of Reclamation people, many of whom have the experience necessary to go in and look at buildings and determine what, in fact, the conditions are, what is needed and what the state of repair is. We are starting this effort in Navajo country which is one of our largest areas for facilities, and we will be getting a report back soon.

I think that is another 30 or 60 days away. We should know something then. And once that report is in, we will kind of compare it with what has been used as a rule of thumb. A deterioration rate of a building is like a depreciation schedule. We will have actuals we can back up to that number and see if, in fact, we are really behind or where we need to go.

That will also indicate to us the usage of the buildings. Many of the buildings that have been classified as in need of repair are not even in use and should have no relationship to the budgeting of funds for that particular site.

The other thing is, we have a priority system that would allow us to prioritize our funds, addressing those needs of safety and safety hazards first, and then going on down until we get to general repair and maintenance kinds of things.

FACILITIES IMPROVEMENT BACKLOG

Mr. **Yates**. What is your backlog on facilities improvement?

Mr. **Swimmer**. We don't know.

Mr. **Yates**. You don't know until you get that report?

Mr. **Swimmer**. Our best guess now is over $600 million. That is an awful lot of backlog to be guessing at, and that, as I said, is based on what could be considered a depreciation rate, not what is actually needed, and I don't feel comfortable until we find out what those numbers are that we get from our survey.

FACILITIES IMPROVEMENT AND REPAIR

Mr. **Yates**. How do you get your figure of $28.9 million?

Mr. **Swimmer**. It is the best guess to provide improvement and repair to those buildings we think are in desperate need of it now.

Mr. **Yates**. What did you ask OMB for, do you remember? Was that Mr. Latta's job, or does he just have schools?

Mr. **Swimmer**. I don't know what we asked OMB for.

Mr. **Yates**. Well here, we look at your very optimistic budget that you asked the department for. You asked for $110.5 million for buildings, utilities, irrigation systems, land acquisition and housing. And the department chops you down to $73 million. And then, lo and behold, you go to OMB, and they chop you down even more. They chopped you down from $73 million to $59 million. So you wind up with almost 50 percent of what you originally thought you were going to get. That is quite a cut, isn't it?

Mr. **Swimmer**. On the issue I was addressing, the top line—

Mr. **Yates**. I know.

Mr. **Swimmer**. We did not request any for new housing under the HPL program.

Mr. **Yates**. The top line indicates you are down by 40 percent at least. That is a substantial cut. What is cut out? Apparently when you started out at $50 million, you didn't have any idea as to where you were going. What did you lose in the process?

Mr. **Swimmer**. $50 million was a ball park figure for the facilities improvement and repair, not knowing what the upper limit was, but having estimates of a backlog anywhere from $400 to $600 million, I guess you could spend any amount of money you want to.

My feeling is that is not any better a number than what we were asking for, and until we get a system that is working and until we can identify what the real needs are, we might be spending money—while it probably needs to be spent—won't necessarily need to be spent on the projects we were proposing. Because we didn't really have and don't have, in my opinion, a handle on where those monies should be spent.

Mr. **Yates**. Aren't you required to identify certain projects as being necessary for attention, assuming that instead of $600 million you have got $300 million, which is half, it is not likely to be much less than that, but even assuming that it is half, $300 million, or you can take it lower, $200 million. Is $28 million enough to take care of that property?

Mr. **Swimmer**. Well——

Mr. **Yates**. I would think it wouldn't be.

Mr. **Swimmer**. If you were to include everything that was in that particular budget, which would include modifications of class rooms, adding gymnasiums, improving site——

Mr. **Yates**. Is all that in there for the next year?

Mr. **Swimmer**. Not entirely. We have tried to focus on those things that were immediately needed: water, sewer, plumbing issues, safety issues, and try to get those resolved with the money that we have.

Mr. **Yates**. Does the President know the Indian children aren't going to get their gymnasium? What do you think?

Mr. **Swimmer**. Some of them have pretty nice ones and some of them don't. I guess we all come up with different kinds of education facilities. I am just prioritizing and trying to come in with a budget that is reasonable; certain things get left out.

Mr. **Yates**. When does this plan come in that is going to tell you exactly the state of the backlog of facilities improvements and repair?

Mr. **Swimmer**. Several months.

Mr. **Yates**. You have no indications yet as to what it is going to be?

Mr. **Swimmer**. No. The Navajo area, as I said, is a large area, and from there, we get an idea how accurate the figures are, and hopefully will be able to extend that across the country.

Mr. **Yates**. The list of proposed projects of 1987 are the two schools, Turtle Mountain and St. Francis?

Mr. **Swimmer**. That was our priority. We didn't have money in for new construction.

FY 1987 FI&R PROJECTS

Mr. **Yates**. At what point will you be able to tell the committee what projects make up the $28,960,000?

Mr. **Swimmer**. Right away.

Mr. **Yates**. Can you? Do you want to give us a list today, or do you have to wait until the list comes in?

Mr. **Swimmer**. Did we submit it? We have a list. We are ready to submit it.

Mr. **Yates**. All right, give it to us. We would be glad to get it. And tell us how you arrived at the list. I assume all of them are the projects that are falling down, aren't they?

Mr. **Swimmer**. They are the projects that need repairs and improvements. There are no new projects.

[The information follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 23 1986

Honorable Sidney R. Yates
Chairman, Subcommittee on Interior
and Related Agencies
Committee on Appropriations
House of Representatives
Washington, D.C. 20515

Dear Mr. Yates:

Enclosed for your review and approval is the Bureau of Indian Affairs proposed Fiscal Year 1987 Facility Improvement and Repair (FI&R) Program. In accordance with House Report Number 98-886, this list will be published in the Federal Register after receipt of Congressional consent. A similar letter is being sent to Honorable James A. McClure, Chairman, Subcommittee on Interior and Related Agencies, Committee on Appropriations, United States Senate.

Because of the FI&R work conducted in prior years, most of the serious safety problems have been addressed and consequently relatively few category one (safety related work of a critical nature) needs are reflected on attachment one, the actual list of projects where we recommend for FY 1987.

Because of Senator McClure's concern about the delineation of improvement and repair work versus new construction, we have included definitions of these activities (attachment 2).

Sincerely,

Ross O. Swimmer
Assistant Secretary - Indian Affairs

Gerald R. Riso
Assistant Secretary - Policy,
Budget and Administration

Enclosures

Attachment 1

4/16/86

FY 87 TENTATIVE FI&R PROGRAM

ABERDEEN	PROJECT	COST	CATEGORY OF NEEDS ADDRESSED /1 AS CARRIED ON BACKLOG
84A11Z	Bullhead	$ 1,300,000	
85A01Z	Eagle Butte L & O	1,451,700	2, 3, 4, 5
82A12Z	Mandaree	500,000	3, 4, 5
85A02Z	Fort Yates	535,000	2, 3, 4, 5
		3,786,700	
ANADARKO			
84B01Z	Haskell	600,000	1, 2, 3, 4
MUSKOGEE			
84G02Z	Carter	266,000	2, 3, 5
PHOENIX			
85H04Z	Papago (3 sites)	969,100	2, 3, 4, 5
ALBUQUERQUE			
84L01Z	Santa Fe Ind. Sch.	1,276,000	2, 3, 4, 5
NAVAJO			
83N04Z	Tuba City Elem. Sch. & HDQ.	2,700,000	1, 2, 3, 4, 5
85N12Z	Beclabito	143,000	2, 3, 4, 5
85N04Z	Crystal	1,351,000	2, 3, 4, 5
85N02Z	Wingate Elem. Sch.	1,386,000	1, 2, 3, 4, 5
82N02Z	Wide Ruins	529,000	1, 2, 3, 4
83N18Z	Low Mountain	1,066,000	1, 2, 3, 4, 5
84N08Z	Shonto	2,250,000	2, 3, 4
83N08Z	Nazalini	545,000	2, 3, 4
86N02Z	Tuba H.S. Roof	1,500,000	(Not yet a safety hazard but potential one if work is long deferred.)
		10,184,000	
PORTLAND			
84P01Z	Warm Springs (4 sites)	200,000	3, 4
EASTERN			
84S10Z	Cherokee L & O	2,178,000	2, 3, 4, 5
Total FI&R Construction FY-87		$ 20,745,800	

/1 1- Safety related work of a critical nature; 2- Sanitary related work; 3- Safety related work of a non-critical nature; 4- Work required because of violation of code or regulation; 5- Work required because of a functional deficiency.

FY 1987 TENTATIVE FI&R PROGRAM

ABERDEEN

BULLHEAD DAY SCHOOL (84A11Z) ECCAA $1,300,000 -- Congress has directed that a modular multi-purpose facility be provided for this school. 2,319 square feet of demolition is included.

EAGLE BUTTE L & O (85A10Z) $1,451,700 -- Public Law 93-415 Title V requires the separation of juvenile from the adult population. This project provides for an addition of 5,000 square feet to accomplish this separation plus renovation of the existing detention and judicial facilities to address category 2, 3, 4 and 5 needs.

MANDAREE DAY SCHOOL (82A12Z) ECCAA $500,000 -- This project will correct code and maintenance deficiencies in classrooms and shops, and upgrade the facility to present day standards. Category 3, 4 and 5 needs are addressed.

FT. YATES (85A02Z) ECCAA $535,000 -- This project will renovate the sewer mains and services that have deteriorated beyond economical repair, repair streets after sewer main installation, and correct surface drainage. Category 2, 3, 4 and 5 needs are addressed.

ANADARKO

HASKELL INDIAN JUNIOR COLLEGE (84B01Z) ECCAA $600,000 -- This project will upgrade the boys dormitory, building No. 53 to meet current codes and standards, and will provide housing for 37 students. Numerous serious safety problems have been identified through safety inspections. Category 1, 2, 3 and 4 needs are addressed.

MUSKOGEE

CARTER SEMINARY (84G02Z) ECCAA $266,000 -- This project will correct fire safety egress violations at the dormitory and correct USIHS safety, health and handicap violations in the kitchen and dining areas. Needs 2, 3 and 5 are addressed.

PHOENIX

PAPAGO (3 Sites) (85H04Z) ECCAA $969,100 --

1. AGENCY HEADQUARTERS (approximately 30% of project total): Needs addressed include categories 2 and 3. Project provides general FI&R and eliminations of life safety deficiencies for Agency office building and shop building. Propane lines will be relocated. Rewiring and removal of buried gasoline tank also included.

2. SANTA ROSA SCHOOL (approximately 60% of project total): Needs addressed include categories 2, 3, 4 and 5. Project provides energy related retrofit, handicap renovations, corrections of life safety deficiencies and general FI&R for two dormitories, two school buildings, one kitchen/cafeteria, two general shops and a storage facility for flammable liquids to comply with codes will be constructed.

3. SAN SIMON SCHOOL (approximately 10% of project total): Needs addressed include categories 3 and 5. Project provides general FI&R and correction of electrical deficiencies for three school buildings.

ALBUQUERQUE

SANTA FE INDIAN SCHOOL (84L01Z) ECCAA $1,276,000 -- This project replaces outdated sewer and water service and distribution lines throughout the school campus. The project provides major I&R for one auditorium (outdoor), two gymnasiums, one kitchen/dining building, and one administration office. Major energy retrofit (replacement of non-energy efficient window units) is included. Needs addressed include categories 2, 3, 4 and 5.

NAVAJO

TUBA CITY ELEMENTARY SCHOOL & HEADQUARTERS (83N04Z) ECCAA $2,700,000 -- This project covers upgrading and code compliance of dormitory building No. 423 and other general purpose facilities. Included is replacement of 26,000 linear feet of liquid propane lines. Categories 1, 2, 3, 4 and 5 needs are addressed. 4,415 square feet of demolition of is included.

BECLABITO DAY SCHOOL (85N12Z) ECCAA $143,000 -- This project calls for improvements to the elementary school building No. 301 including replacement lighting, emergency lighting, a new fire alarm system, a new insulated roof and structured wall repair. Also provided in this project are site improvements and water line replacements. Category 2, 3, 4 and 5 needs are addressed.

CRYSTAL BOARDING SCHOOL (85N04Z) ECCAA $1,351,000 -- This project covers upgrading and code compliance of kitchen/dining and dormitory facilities. This project also includes security lighting. Category 2, 3, 4 and 5 needs are addressed. At the time the original plans and designs were developed, meetings were held with the School Board and commitments were made for these additions which exceed the $250,000 ceiling on new construction; at that time, BIA was not operating under the $250,000 new construction guideline.

WINGATE ELEMENTARY SCHOOL (85N02Z) ECCAA $1,386,000 -- This project includes improvements to dormitory building Nos. 157 and 160. Work includes the addition of exterior insulation, the replacement of hardware, the upgrading of electrical, mechanical and heating systems and various other code compliance items. In addition the project calls for major boiler system improvements and site work. Needs addressed include all categories.

WIDE RUINS (82N02Z) ECCAA $529,000 -- This project provides for the improvement and repair of utilities and related site items. Included is the replacement of gas lines, repair of a sewage lagoon, repair of a water tower, provision of a water storage tank and replacement of well houses. Category 1, 2, 3 and 4 needs are addressed.

LOW MOUNTAIN BOARDING SCHOOL (83N18Z) ECCAA $1,066,000 -- This project calls for site improvements including utility line replacement, circulation improvement and erosion control. In addition, the project provides for improvements to elementary school facilities including classroom, kitchen/dining and dormitory upgrading. The work includes handicapped accessability and use, window replacement and general code compliance. Category 1, 2, 3, 4 and 5 needs are addressed. 2,457 square feet of demolition is included.

SHONTO BOARDING SCHOOL (84N08Z) ECCAA $2,250,000 -- This is the second largest BIA boarding school. The project covers site work and upgrading and code compliance for dormitory No. 671 and classroom builiding No. 648. This project is Phase I and the facility will require a Phase II project of similar size to complete the renovation and upgrading to current standards. Category 2, 3, 4 and 5 needs are addressed.

NAZALINI BOARDING SCHOOL (83N08Z) ECCAA $545,000 -- This project covers new roofs, fire alarms and emergency lighting and handicap accessability for dormitories Nos. 861 and 862, upgrading of kitchen/dining building No. 863. Also included are sewage lagoon chlorinators and fire protection system. Category 2, 3 and 4 needs are addressed.

TUBA CITY (GRAY HILLS) HIGH SCHOOL (86N02Z) ECCAA $1,500,000 -- This project covers the replacement of the entire roof of approximately 5.7 acres which cover high school complex (consisting of classrooms, laboratories, kitchen/dining areas, gymnasium, dormitories and related space). Included are insulation and additional roof drainage.

PORTLAND

WARM SPRINGS AGENCY (84P01Z) ECCAA $200,000 -- This project involves FI&R at 4 separate project sites under the Warm Springs Agency jurisdiction. Category 3 and 5 needs are addressed. 1,620 square feet of demolition is included.

1. SHITIKE BUTTE: This project provides major I&R and elimination of safety deficiencies for one fire lookout tower (including installation of grounding strip and stair treads).

EAGLE BUTTE: This project provides major I&R and corrections of safety deficiencies for one fire lookout towers.

3. SIDEWALTER BUTTE: This project also provides major I&R to public restroom facility, recreation shelters and site. A lightning protection system is added to fire tower and propane gas lines are brought up to code.

4. LONE PINE: This project provides general I&R to public restroom facility (including clearing plumbing lines) and provides general site improvements.

EASTERN

CHEROKEE LAW AND ORDER (84S10S) ECCAA $2,178,000 -- This project will convert the hospital to a Law and Order and detention facility.

ATTACHMENT 2

NEW CONSTRUCTION AND FI&R

New construction requests are generated from two sources: (1) Need for facilities resulting from the development of new or expanded programs, and (2) need to replace facilities that are dysfunctional and no longer economically feasible to improve or repair. Applications originate at the local or Area level and are forwarded to the Central Office, Albuquerque, through the agency and area offices. A final ranking is made by Central Office, Washington, based upon the justifications and information presented. The Bureau-wide list developed from the area submissions is published in the Federal Register yearly. Construction money is requested by project for new construction. The entire process involves education and facility personnel from the local through Central Office levels.

Facility Improvement and Repair projects are identified from the facilities backlog listing. Tasks placed on the backlog are categorized as:

c - replacement
h - handicap
e - energy
m - general repair and improvement
s - safety
x - environmental

Projects are then ranked as described in the Federal Register Vol. 51, No. 30/ Thursday, February 13, 1986/Notices.

1. Safety-related work of a critical nature.
2. Sanitary-related work.
3. Safety-related work of a non-critical nature.
4. Work required because of a violation of code or regulation.
5. Work required because of functional deficiencies.

Internal BIA guidance (46 BIAM) provides: "Facilities Improvement and Repair costs for an existing building, structure, utility, or grounds area over a three-year period shall not exceed 50% of the current new construction replacement cost of a facility of the same functional use and size." The idea behind this guidance was that if the costs exceeded 50% of the current new construction replacement cost that it probably made more sense to provide for an entirely new facility (via the new construction program) from an economic or cost/benefit standpoint.

FI&R projects were not intended to substitute for "new construction"; FI&R projects were not intended to replace facilities or build facilities for new or significantly expanded programs. However, confusion has existed because correcting program (functional) deficiencies as well as code deficiencies was allowable and because some "new construction" was allowable as part of a "project" as long as the "new construction" portion of the project did not exceed $250,000. Finally, the $250,000 ceiling for new construction was not adopted by BIA until recently and some of the "shelf projects" were designed without this limitation.

In Summary: New construction is used to replace facilities or build facilities for new and/or expanded programs.

FI&R funds are used to repair, renovate and upgrade existing facilities.

Mr. **Yates**. We talked about Rocky Boy, and we talked about Two Eagle. What is the status of design for these schools?

Mr. **Latta**. The Rocky Boy design should be completed in June. Two Eagle, I don't think will be ready before October.

Mr. **Yates**. Shouldn't you have money in the budget for those?

Mr. **Latta**. They could be constructed in 1987.

Mr. **Yates**. So you should have money for those. How do we put your smile into the record? I guess that is the best way to put it in, by my referring to it.

How much money do you need for construction of each of the schools?

Mr. **Latta**. $2.5 million.

Mr. **Yates**. Each?

Mr. **Latta**. That would include the construction——

Mr. **Yates**. Do you need the $2.5 million in 1987? Do you need all the money in 1987?

Mr. **Latta**. Yes.

Mr. **Yates**. What is the status of the remaining schools on the current priority list?

Mr. **Latta**. We have planning money for Turtle Mountain Middle School and St. Francis and the planning is almost complete now on Turtle Mountain, but it will be right at the end of this fiscal year before it can go to design. The planning is not that far along on St. Francis yet.

Mr. **Yates**. Are there any others that have completed designs?

Mr. **Latta**. No, sir. That is why I think it is important the master plan for education Mr. Swimmer was talking about be put in place, before we go further with any construction, especially for new schools, so we won't be building schools where they may not be needed.

Mr. **Yates**. Well, we have these two. We have designs for Rocky Boy and Two Eagle, and we have two more in prospect, St. Francis and Turtle Mountain. Do you have any others on the priority list?

Mr. **Latta**. No, sir.

Mr. **Yates**. Usually you give us a list of ten schools.

Mr. **Latta**. We made a statement on that list that we did not prioritize any more this year pending the development of the master plan.

Mr. **Yates**. Is the master plan considered in the nature of a deferral?

Mr. **Latta**. I suppose.

Mr. **Yates**. Or rescission?

Mr. **Swimmer**. I don't think you can consider it in that respect. I really don't——

Mr. **Yates**. In which respect?

Mr. **Swimmer**. Either way. I don't know what the design in the past has been as far as getting new construction or not getting it.

Mr. **Yates**. We have had master plans almost every year.

Mr. **Swimmer**. Really?

Mr. **Yates**. Oh, yes. That is why we ask for priority lists every year. Maybe you have a super master plan coming out?

Mr. **Swimmer**. I haven't seen any of those master plans, and I hope we can develop something, and an education program that addresses the needs——

Mr. Yates. How long will you be developing your master plan?

Mr. Swimmer. I would defer to Henrietta's judgment on that.

Mr. Yates. I told you it was a deferral.

Mr. Swimmer. We will defer to you.

Mr. Yates. Henrietta, do you want to tell us about it?

Ms. Whiteman. Sure. First of all, Mr. Chairman, I would like to say that I am even newer than Mr. Swimmer.

Mr. Yates. You have had experience, though, haven't you?

Ms. Whiteman. Yes, I hope I have.

In terms of the master plan, this is something we and the——

Mr. Yates. What did you do before you came to Mr. Swimmer?

Ms. Whiteman. I taught at the University of Montana.

Mr. Yates. What did you teach?

Ms. Whiteman. Native American Studies.

Mr. Yates. Good for you. What are Native American Studies?

Ms. Whiteman. It is the study of the historical, the cultural, and the contemporary life of American Indians.

Mr. Yates. Is that one course?

Ms. Whiteman. No, actually not. We have a program where we offer a minor degree in Native American Studies. We have about 17 courses, five of them graduate level, 12 under-graduate level. We don't have a major in Native American Studies, but it allows students to study the indigenous cultures of this country's first people.

Mr. Yates. That sounds wonderful. I would like to take it, myself. Do you teach a correspondence course?

Ms. Whiteman. No, but I will devise one for you.

Mr. Yates. If I keep working with BIA, I had better take it. Both BIA and Navajo-Hopi. Go ahead, Henri.

EDUCATION

Ms. Whiteman. In terms of the initiatives that I plan to carry out in education pursuant to the kinds of directives Mr. Swimmer has given you, providing a quality education for students will necessitate that several things occur. First shall be, of course, the development of an educational plan, which is going to have to occur very, very quickly. We need to know what kind of education Indian children need, because we need to know where are going.

As a side issue to the whole facilities issue we have been discussing is knowing what we would like to see be the educational experience of Indian children within the next year and maybe into the next five years. We are going to have to get a handle on that very, very quickly.

Mr. Yates. You are indeed.

Ms. Whiteman. Because that, in turn, is going to be reflective of my personal goals and those of the Office of Indian Education Programs that have to occur in developing Federal education policy.

Mr. Yates. Who is developing your master plan for you? Are you doing it, or is it under contract, or what?

Ms. Whiteman. No, we have given some thought to this, and I have not had time to sit down with staff. Because it has to be done soon and because we have other kinds of commitments, we are hoping to engage a contractor to work with me very closely to look at the kind of Federal education programs that need to be developed and to get something in place for us, knowing there are other kinds of issues that have to be addressed.

Mr. YATES. Is there money in the budget for it, for a contractor?

Ms. WHITEMAN. In 1986, we will have to identify some resources in this current existing budget. There is nothing currently that would say we will hire a contractor to develop a master plan, but I think that is such a high priority, Mr. Chairman, we will have to find money somewhere, because we will have to know where we are going in order to develop the educational policy that needs to occur.

Mr. YATES. Why didn't you ask for a supplemental?

Mr. SWIMMER. I think we can find money in the budget for 1986. It might require reprogramming.

Mr. YATES. I think the committee would welcome a reprogramming.

Ms. WHITEMAN. We intend to address that. Because out of that is going to come a very comprehensive, coalescent Federal education program for Indian children. This, of course, is going to have to be looked at in concert with the review and the strengthening of the curriculum in Bureau-funded schools, which is mandated by the implementation of the minimum academic standards for the education of Indian children.

Also, we would like to strengthen our curriculum; provide the course work we feel our students need as mandated by law by those particular standards that we are hoping to implement this year; review dormitory criteria; and look very closely at strengthening the curriculum, as well as providing some in-service training for teachers and professional staff development that must of necessity occur, and look at a primary requsite for school effectiveness: certification of teachers.

So it is an effort that is long overdue, but in terms of criteria, we have some minimum standards regarding teacher-faculty ratio, certification, and the like.

Mr. YATES. All right. We look forward to receiving those as promptly as possible. Thank you.

MINERALS MANAGEMENT

Let's talk about Minerals Management Service, and the loss of Indian royalties. Have you been following that at all, Mr. Swimmer?

Mr. SWIMMER. Yes, I have; from the time I was tribal chairman until today, it has been a serious issue with me.

Mr. YATES. We have a CERT letter here. Are you aware of the letter CERT wrote to me on February 22? It is a very good letter, and I probably ought to give you a copy of this if you don't have one. Let's see whether they carbon copied you. Well, it is not indicated——

Mr. SWIMMER. I think we do have a copy.

Mr. YATES. We went into it very carefully. I read it line by line to Mr. Bettenberg. Incidentally, in the list of board members—and I recited them for the record too—there is no reference to Navajo. Peterson Zah told me he was still a member of CERT.

Mr. SWIMMER. I think he is.

Mr. YATES. I wondered why he wasn't included in that. Those are very serious charges CERT makes about its relationship and how we find out how much the Indians are losing. Somebody told me, it was the Jicarillas who put their own equipment in, have bought their equipment, metering equipment, and put it on their reservation so that they had a better understanding of what the oil is that comes through there.

Mr. SWIMMER. That is a possibility. I know it is not a particularly good answer, but unfortunately what we are faced with is the time problem in trying to bring everything on and get it up on various computer systems and get those computer systems to talk to one another and working with—I know MMS put it at a high level, and the Assistant Secretary for that level and I have sat down with the Minerals Management people and with our Bureau of Indian Affairs trust people, and I think we have a pretty good understanding of what needs to be done and how to proceed. They have been having problems with their contractor. It looks like those problems are getting worked out, and we can begin getting a lot better information. It is estimated now, in December, with some of the so-called enhancements, they will be able to do with the system that they are getting on line with Martin Marietta.

In the meantime, we are doing a lot of work within the Bureau to develop our internal systems and bring those up to speed so that we don't fall down on the job and can furnish the information necessary to the allottees and to the tribes when the payments are made. And part of that has been a pilot project at Anadarko and in the Navajo and, I believe in the Billings area.

INDIAN GAS ROYALTY PAYMENT PROBLEMS

Mr. YATES. The Indian Government Operations Committee has issued a report entitled "Indian Gas Royalty Payments-Problems Persist", dated July 19, 1985. Have you had a chance to read it yet?

Mr. SWIMMER. No, I haven't. There are problems.

Mr. YATES. I am sure there are lots of problems, but they say the subcommittee's review shows clearly the Department of the Interior has not yet taken seriously its responsibilities under the Federal Oil and Gas Royalty Management Act of 1982, and they find this: The committee was appalled to learn the number of inquiries and complaints about Indian royalty payments is of such proportions that some BLM offices have been forced to close their doors to Indian allottees for periods ranging from two hours per day to two days of the five-day work week in order to carry out the responsibilities of those offices. Is that true?

Mr. SWIMMER. I don't know the truth of that statement. I know we had some real severe problems at Anadarko back in 1983, 1984, and part of 1985.

Mr. YATES. But you have a tough role to play here. MMS has the responsibility, as I understand it, for determining how much money is to be made available to the Indian allottees. They then send you the information and you make the checks out to the allottees, is that a correct description?

Mr. SWIMMER. They actually collect the payments from the payers on the various leases. On those leases, there might be many

Indian allottees, and they send us a check then for the amount of money they collected. We then have to take that money and send it to the agency that is responsible and get it subdivided from there. And so far, the records we have don't match with the records MMS has, and part of the reconciliation will involve a computer program that is being added so at the time we get the lease money from MMS, they will also identify for us the appropriate allottees so that that money can go directly into their account and be credited.

Mr. YATES. I don't understand that. You mean the amount MMS pays you is not the same amount you think it should pay you?

Mr. SWIMMER. No, most of the time it is.

Mr. YATES. It is. Perhaps I didn't understand your last statement, then.

Mr. SWIMMER. I am going to let Frank enlighten us. When MMS sends us a check for a particular lease, that lease has several allottees. Then what happens is that money gets invested immediately, and a record of that then goes to the agency where that particular lease happens to be. And at that point in time, ownership is established, and then there is an attempt to spread that money to the individual allottees in the proportion of their ownership. Because there is a separation in the system, it is often difficult to reconcile those until some time after the fact.

Mr. YATES. We have a letter here from Mr. Taradash of the firm of Nordhaus, Haltom, Taylor & Taradash from Albuquerque, and they say this, this is addressed to me, to the attention of Mr. James O. Kane. He is our investigator. That is a different committee.

"Enclosed herein, please find a copy of Judge Mecham's memorandum of opinion and order entered March 24, 1986." Are you familiar with that? March 24, 1986. Basically the judge agreed with the plaintiff's construction of the statute and has ruled the Secretary of the Interior is obligated to pay into the individual Indian money accounts of Navajo allottees oil and gas royalty funds from leases and allotments on or before the last business day of the month in which those funds are received by the Secretary. The Secretary has been and continues to be in violation of the statutory requirement. Is that you, or is that Mr. Hodel?

Mr. SWIMMER. That is us, but it is also a decision of the court to do that, and it is virtually impossible almost under any system to do it if the collection isn't made until the 29th of the month to pay it into an allottee's account on the 30th of the month.

Mr. YATES. Why doesn't somebody collect before then? Why don't they collect on the 15th of the month?

Mr. SWIMMER. I presume it is dependent on what the agreement says and when the lease payment is due.

Mr. YATES. In view of the judge's decision, why is it necessary to get that amended to provide for an earlier payment?

Mr. SWIMMER. I can't answer that question.

Mr. YATES. Should I ask Frank that question?

Mr. RYAN. I am not sure what the front end problems are.

Mr. YATES. Ask Mr. Bettenberg, he will tell you there are lots of them.

Mr. RYAN. He hasn't responded in the context of this case.

Mr. YATES. I am sure he hasn't. I have an impression there are a lot of things there he doesn't know quite how to handle. And I am wondering whether you are in the hot seat here, Mr. Swimmer. Because you are being given what Mr. Bettenberg at MMS says is your allotment, and you take that out and pay it out to the Indian allottees. What is your responsibility in that capacity? Suppose he knows that it is not an adequate amount or suspects it is not an adequate amount, do you have the responsibility of suing Mr. Bettenberg, or MMS, in order to protect your Indian allottees? Is that a question I should address to Frank or to you?

Mr. SWIMMER. I will take the question. I think if we knew that there was an error being made, we would have to make adjustments for it because ultimately we would be liable as a trustee.

Mr. YATES. But you do know that.

Mr. SWIMMER. We have had some areas in the past, and what I am saying——

Mr. YATES. The Linowes Commission said that there is a deficit of five to ten percent.

DEFICIENCIES IN HANDLING ROYALTIES LEASES

Mr. SWIMMER. I don't deny that. There have been several problems in the past in collecting gas and oil royalties.

Mr. YATES. Mr. Bettenerg said there are deficiencies even now. If there are deficiencies, how are your allottees protected so they get the full amount of money they have, or is the Federal Government going to be in for a whopping big suit on the deficiencies? We have an investigative staff report on certain deficiencies in the Department of the Interior's handling of royalties from oil and gas leases, timely collection and disbursement of royalties. Are your Cherokees losing money on this too?

Mr. SWIMMER. We don't have much oil and gas.

Mr. YATES. Since when? I thought you had lots of it.

Mr. SWIMMER. No. That all went to the Osage.

Mr. YATES. Many of the deficiencies noted are not new and have been identified as existing since 1965 by IG, congressional studies, and other studies. The study disclosed unreported royalties due on Federal gas and oil leases range from five to ten percent. Applying these percentages to the $28 billion in royalties collected since 1979 could result in an estimated shortfall of $1.4 billion to $2.8 billion in uncollected royalties. Indian gas and oil revenues exceed $200 million each year, and if unreported Indian revenues range between five and ten percent, uncollected annual revenues could mount to $10 to $20 million.

So what do you have to do about it? You have to sit on Mr. Bettenberg's doorstep and say "Look, Bill, I am on the spot."

Mr. SWIMMER. We have been doing that, and I think that we have received some attention as a result of that and are moving to solve the problem. That doesn't mean we know how we are going to collect anything due in the past, although we are moving on a reconciliation of those accounts, too.

Mr. YATES. Who has the trust responsibility here, do you or does Mr. Bettenberg, or do you both have the trust responsibility?

Mr. RYAN. According to testimony provided by Mr. Bettenberg, the Department of the Interior shares a trust responsibility. The Bureau of Land Management for monitoring production, the Minerals Management Service for collecting and distributing, and our responsibility for taking that money, investing it and seeing it is accounted for.

Mr. **Yates**. That is at the tail end of the process. When you get the money, you invest it. What about the question as to whether you have enough money.

Mr. **Ryan**. Essentially, there are two problems here. One is a problem in production accounting, knowing whether or not, how much was produced, being able to verify that, being able to verify what the value of that was, and then there is the problem of processing the money. That money is provided to Minerals Management Service, which collects it and then provides it to the Bureau, but through its own unique processes makes a distribution.

The responsibility of the trustee is two-fold: to verify the substance and validity of the production, and to maintain a proper system for accounting and distribution. And in both of those areas, the Bureau and the Minerals Management Service have been cooperating and sharing these problems for quite some time.

Mr. **Yates**. The question in my mind is whether or not this provides adequate protection for your Indian—I was going to say clients, allottees. You have three agencies in the Department of the Interior, all of whom have different responsibilities. Should you be acting in this, should it be an outside counsel; for example, should it be an outside agency other than the Department of the Interior so that there is a reduction of a conflict of interest? I think the conflict of interest is that you have three different groups within the Department of the Interior not being able to sue each other.

Would somebody on the outside, say in view of the fact that we know there is a public shortage of funds, shouldn't somebody be pushing the Federal Government to recover that? Is that what this lawsuit is about that we talked about, from Mr. Taradash?

Mr. **Ryan**. It is about an improper distribution of funds into the IIM, individual Indian money accounts. That is more in line with the system's problem.

Mr. **Yates**. The question I have is that the allottees are very patient people. And they are going to lose money because they are a very patient people, aren't they?

Mr. **Swimmer**. I think——

Mr. **Yates**. Are you ever going to be able to find out how much they lost? It is estimated it would be five and ten percent. Suppose they were going into a law court and saying "This is what the investigators have found, this is what the Linowes Commission has found"? How will you be able to reflect that? Because all you can say is, "We know there is a shortage, we don't know what the shortage is", right?

Mr. **Swimmer**. We can't even attest to that, although we are pretty sure that there will be a shortage. I don't know that those figures are accurate, but there is a shortage of what has been collected, and without going through and——

Mr. **Yates**. I don't remember what Mr. Bettenberg told us. I must say I was worried about it.

Mr. **Swimmer**. It is of concern to us too. The issue as to whether we do something differently or not is maybe beyond the——

Mr. **Yates**. Something occurs to me, why can't you do it? Why can't you put the machine—unless the oil is being tapped somewhere before it gets through the machines that determine how much is withdrawn, but I don't think anybody is charging that has happened now. What is wrong then? Are the metering machines no good?

Mr. **Swimmer**. You are talking about a problem of an auditing system and a collection system. Part of our problem is that the collecting system and accounting for the money, we are not sure that we have actually collected less money. On the other hand, there could be an auditing problem with the amount of oil that is actually registered or gas as it comes out through the meter, which would require some on-site evaluation of 4,000 leases and 15,000 wells that we have, and that is an issue that is being addressed within the production/accounting system.

Mr. **Yates**. How long are you going to be working with him before you protest?

Mr. **Swimmer**. I think it is not a matter of protesting, it is a matter of getting the job done. What we have done is sat down with him and told him we have to have the system working.

Mr. **Yates**. Why can't they get the system working?

Mr. **Swimmer**. The biggest problem has been the time that it has taken to get the prime contractor, the Martin Marietta group, to complete the data processing part of the contract. And that is getting more defined now, and I think, as I said before, as far as the collection part of it, we should be in pretty good shape by the end of this year if they meet the existing targets.

So the data we get from money we collected that is allegedly owed us will be accurate and we will be able to distribute it.

The other issue that is addressed in your question is the audit. Are we getting the right amount of money in the first place from the well——

Mr. **Yates**. How does an audit determine this if you don't know whether you are getting the right amount?

Mr. **Swimmer**. We have an on-site investigation, periodically, of metering devices and whatever else is involved in that well.

Mr. **Yates**. Let me read to you from my colloquy with Mr. Bettenberg of MMS.

Mr. Bettenberg says:

> Given the discussion we had last year on royalty management, I thought it would be appropriate to talk about that a little bit. Last year, you recall, we had a number of problems in royalty management programs, some things hanging so far as rescissions were concerned. We have a lot of progress yet to make.
>
> Mr. **Yates**. Does that include the way you are treating the Indians?
>
> Mr. **Bettenberg**. It certainly does.
>
> Mr. **Yates**. You have made some progress, but you have a lot of progress to make.
>
> Mr. Bettenberg. Yes, I think that is adequate.
>
> Mr. **Yates**. Are the Indians getting their full share of royalties?
>
> Mr. **Bettenberg**. Yes.
>
> Mr. **Yates**. How do you know that?
>
> Mr. **Bettenberg**. We know that because we have our collection set up, we do audits and so forth.

You are not so sure, are you?

Mr. **Ryan**. Mr. Bettenberg is referring to audits of the sales information, comparing that with the production data, and when an audit cannot be resolved any other way than when the discrepancy is in a state and can't be explained any other obvious way throughout the processing system and it turns out it may be something in the financial records or the production and so forth, MMS will reach into those company records and check production themselves to see if they are the same.

Mr. **Yates**. I am of the opinion Mr. Bettenberg wasn't telling us the full truth.

I said:

> What about the question of property repossession with respect to the Indians and loss of their electric power?
>
> Mr. **Bettenberg**. We are not involved in electric power, Mr. Chairman.
>
> Mr. **Yates**. What happens if the Indians don't pay power debts? You haven't given money to pay the power debts because you haven't paid their royalties on time. Are you paying the royalties on time?
>
> Mr. **Bettenberg**. As a general matter, yes."

We know that is not true, don't we? You tell me you can't do anything because you get the money on the 29th.

Mr. **Ryan**. Mr. Bettenberg explained, generally speaking, we are paying the royalties on time.

Mr. **Yates**. You just got through saying you can't pay it on time.

Mr. **Ryan**. That Navajo Court says—he said in his testimony, generally speaking, we are paying it on time. There is a couple of percent difference.

Mr. **Yates**. He said not in a hundred percent of the cases, but generally is what he says.

Mr. **Ryan**. He pointed out MMS is paying the Bureau of Indian Affairs earlier than it is paying for the states and the other leases.

Mr. **Yates**. If what Mr. Bettenberg says is correct, why do we in this committee have to appropriate money for late interest payments?

Mr. **Ryan**. The answer to that is that because a number of payers are paying near the end of the month, and the law requires you pay it before the end of the month, if the law said within 30 days I don't think we would have a problem, but it says within a month. So the problem is when it comes in at the end, if we don't get it, it can't be processed in time.

Mr. **Yates**. How long has this been going on?

Mr. **Ryan**. As far as processing, it is being processed. It is being processed, but late.

Mr. **Yates**. That is right. That is why you are paying interest payments. We ought not to be paying interest. And Mr. Bettenberg also testified they don't have the capacity to verify the propriety of payments, computers spit out the errors. Well, at any rate, let's see—at that time I said, the question came up as to whether Indian oil was being diverted. It was being diverted before it got to the checkout system, which indicated how many royalties they were entitled to.

> Mr. **Bettenberg**. There were some flaps in 1980 before on the Wind River Reservation.

That is what I am talking about. To the best of my knowledge—well, this is what Mr. Bettenberg says:

> I will tell you in royalty management we have improved substantially over the last year. We have substantial improvements yet to make. I will anticipate it will

> take a lot of hard work within the next probably two years when I am in a position to feel fairly comfortable we are doing the job we ought to be doing.
>
> To give you some notion of the progress we are making, our input error rate for our fiscal system was running about 13 percent. As of this past December, it was about 6.5 percent. So they cut it back by half. The fiscal system operating inefficiently, on the VAX computers does in fact work. It collects $450 million per month every month. Most of the money that comes in goes out the next one.

Is that true?

Mr. RYAN. That is true.

Mr. SWIMMER. Unless it is on the 29th.

Mr. YATES. So we are not up against the brink. Well, let's see, you ought to read the hearing. There are about 20 or 30 pages of hearings.

Mr. SWIMMER. We have had similar discussions, and believe progress is being made, and it is being made rapidly as the systems come on line and the computer contract gets done. The problem is for us to change or to do something else now would require a lot of the same kind of startup, and I think they are reaching a point where they will be able to give factual information, give the payments quickly and solve many of the problems we have seen in the past.

Mr. YATES. Are you working with MMS on the question of gaining access for tribes for the production data?

Mr. SWIMMER. Yes.

Mr. YATES. Okay.

Mr. RYAN. As Mr. Bettenberg pointed out in his testimony, the so-called STATSS should come on line by the end of this month, and that is the State and Tribal Support System which provides for online access to sales data and other information. So if you are a tribe or if you are an individual and have an audit question on behalf of the Individual, the agency or the area can access the STATSS to make an inquiry, or a tribe can do it.

As a matter of fact, the Bureau of Indian Affairs will be training its own people on a strategy worked out with MMS.

Mr. YATES. Are you working with your tribes to work with them?

Mr. RYAN. There are a number of tribes that have contracts with MMS for STATSS capability.

Mr. YATES. Do you agree with CERT, if MMS continues to base its accounting principles on the least of it rather than the well level, the definition order level will be unacceptable?

Mr. RYAN. What CERT is doing is criticizing the fact it is not production data, and Mr. Bettenberg is saying it is sales data you want, you want to know what the production is worth.

Mr. YATES. They are not telling him what the production data are. How do the tribes know what they are supposed to get if they don't get production data?

Mr. RYAN. Well, the production data comes from BLM, but what is really relevant is not necessarily the production data as much as the production evaluation of the production, the evaluation of what is produced, and that is——

Mr. YATES. Who handles that?

Mr. RYAN. That depends on the method you employ.

Mr. YATES. Is this BLM's job?

Mr. RYAN. I think Mr. Bettenberg commented on that on some length about the procedures for product evaluation.

Mr. **Yates**. You are standing up for Mr. Bettenberg, and I asked him the question.

Mr. **Ryan**. What I am trying to say is we need some integrity in a couple of areas. One area is in the validity of the production, to be able to verify that, and we need to know that our system of collection and payments has integrity.

On the side where we collect the money and we distribute it, we have made credible gains in the Bureau of Indian Affairs. By the end of this month, we should have the Navajo area office up and functioning.

Mr. **Yates**. That is fine, except you don't know whether you are getting enough money to distribute?

Mr. **Ryan**. One of the problems is a systems collection and distribution problem. If we have 85 to 100 percent by this fall, all the records——

Mr. **Yates**. If you have money to distribute, that is fine.

Mr. **Ryan**. That is more than we could have done a year ago.

Mr. **Yates**. I commend you for that.

Mr. **Ryan**. On the production side, that is a question of the production accounting system. There is a pilot study——

Mr. **Yates**. They don't have guidelines for their auditors. They don't even have guidelines for their auditors yet. How do the auditors know what they are supposed to do?

Mr. **Ryan**. I can't explain it better than Mr. Bettenberg.

Mr. **Yates**. I know. He didn't explain it very well either. See you tomorrow at 10:00 o'clock.

TUESDAY, APRIL 22, 1986.

Mr. **YATES**. Mr. Swimmer. Mr. Reporter, show the hearing as coming to order.

MINERALS MANAGEMENT SERVICE

We are back again. I have two final questions on MMS and BIA. And a point that occurs to me is that the key to all this seems to be Martin Marietta. Martin Marietta is supposed to be solving this problem, isn't it?

Mr. **SWIMMER**. Only part of it.

Mr. **YATES**. MMS says Martin Marietta is supposed to be putting it in shape.

Mr. **SWIMMER**. The part that they are solving is after MMS has finished the conversion to the new computer system they are working on through Martin Marietta. We then expect to have what they call an enhancement to the system which allows us to tie the sales data MMS collects with other ownership records, so when we get a check for a lease, it will also have a distribution report attached to it. We know who each one of those lessors is that is owed the money.

The way it is now, it is split, and we get the lease documentation and the money separately. We have to then send it to the agency office who then breaks it out by an individual lessor, and that gap often times causes us to have delays in getting the payments made.

When the Martin Marietta system is up and running, that particular issue would be resolved. We have been told to expect that by December, and that is counting on Martin Marietta to complete their work by November. We have been put at the top of the list by MMS to make that first enhancement to their system.

Mr. **YATES**. We have got a report from our investigative staff, the Appropriations Committee's investigative staff, on this. We had them report to me on this. This is what they say. I am going to give you this report and ask you to comment on it.

It says, "Five areas and 18 agency offices were visited, information was obtained from area directors, superintendents and their staffs involved in leasing natural resources. Also interviewed were representatives of other Department of the Interior organizations, including field, BLM, MMS technical experts with the Department of Energy, with CERT, the nonprofit organization representing 41 Indian tribes. CERT provided insight on problems they believe exist in BIA's managing of Indian natural resources. The investigation focused on leasing natural resources to develop Indian lands." They said the observational comments on leasing weaknesses reflect a serious breakdown of office leadership, direction and management of leasing activities which extend to other Indian programs.

"The BIA mandate relating to self determination and trust responsibility issues was also reviewed. In making such an evaluation, consideration must be given to the role played by the specific tribes involved in these issues, and the degree of capability and sophistication developed by them. Without more specific knowledge of the various contributions made by many of the tribes, it is difficult, if not impossible, to make a meaningful assessment of BIA's performance in these areas.

"The investigation disclosed the following deficiencies: one, Central Office policy and firm direction is lacking. Two, Central Office contact with field operations is inadequate; accurate and timely statistical data is not available to BIA managers to make informed decisions. The DOI royalty management area is a continuing problem. For example, some recent and past reviews of Federal and Indian oil and gas leases have identified serious management and operational deficiencies needing corrective action. Frequently Indian recipients of royalties have been faced with partial, late and even non-receipt of royalty payments.

"Accountability over using and developing Indian resources has also been incomplete, untimely and in some instances, missing altogether. Central Office organizational weaknesses prevent top officials from initiating effective management decisions and improvement in field operations.

"The BIA manual, which is the source of guidance and procedures dealing with all phases of BIA operations, is so outdated in some sections that its overall value can be seriously questioned. The lack of programmed, independent and special operational reviews by the Central Office exacerbates the lack of current direction and policy to field offices. The Central Office has not provided consistent definitions of the terms "trust responsibility" and "self determination" or how the requirements of each could be combined to carry out BIA's leasing responsibilities of natural resources.

"The Central Office lacks control over the leasing appeals process. These leases often involve large amounts of money and severely impact the earnings of Indians.

"The final point is Indian oil and gas management responsibilities are fragmented among three bureaus, BIA, BLM and MMS, that are not always in full agreement or share the same philosophy or management and program objectives."

You see, he lays on the Central Office, doesn't he? I guess the Central Office is you and a few others. You may want to take a look at the report. That may be entered in the record at this point, and your reply, when received, will also be made available in the record.

[The information follows:]

NOT FOR RELEASE UNTIL AUTHORIZED BY THE COMMITTEE

April 17, 1986

MEMORANDUM FOR THE CHAIRMAN

Re: Leases and Permits for Developing
Natural Resources on Indian Lands

In response to the Committee's directive, an investigation was made of leases and permits to develop natural resources on Indian lands. Certain phases of the directive were not performed because of the disarray and inaccuracy of available records, particularly statistical data.

The results of the investigation are included in the attachment to this memorandum.

Respectfully submitted,

R. W. Vandergrift, Jr.
Acting Chief of the Surveys and
Investigations Staff
House Committee on Appropriations

Attachment

ATTACHMENT
Page 1

LEASES AND PERMITS FOR DEVELOPING NATURAL RESOURCES ON INDIAN LANDS

General Observations and Comments

Based on an analysis of the documentation and information obtained during interviews, some pertinent observations were made--both general and specific--regarding the Bureau of Indian Affairs (BIA) leasing activities to develop Indian natural resources. Some of the more significant deficiencies which adversely affect the way BIA is carrying out its leasing responsibilities follow:

-- Central Office policy and firm direction is lacking.

-- Central Office contact with field operations is inadequate.

-- Accurate and timely statistical data is not available to BIA managers to make informed decisions. In this regard, the Council of Energy Resource Tribes (a nonprofit organization representing 41 Indian tribes) was severely critical of BIA performance in gathering complete and accurate statistical data.

-- The Department of Interior (DOI) Royalty Management Area is a continuing problem. For example, some recent and past reviews of Federal and Indian oil and gas leases (going back to 1959) have identified serious management and operational deficiencies needing corrective action. A January 1985, BIA internal report on oil and gas leases (the first review of these activities) confirmed the earlier observations and recommended corrective actions, including specific direction and policy determinations.

-- Frequently, Indian recipients of royalties have been faced with partial, late, and even nonreceipt of royalty payments. Accountability over using and developing Indian resources has also been incomplete, untimely, and in some instances, missing altogether. In this respect, a November 1985, compilation from 33 Navajo Area Indian allottees contained representative, documented complaints made during the last 2 years. Because of their respective problems with royalty payments, Indian owners of natural resources have experienced hardships which include property repossessions, loss of electric power, and added indebtedness.

-- The seriousness of the DOI Royalty Management problem is supported by an April 8, 1986, Investigative Staff study of DOI's Management of Onshore Oil and Gas Royalties which indicated that unreported royalties on oil and gas leases may range from 5 to 10 percent. When these percentages are applied to the $28 billion collected in royalties since 1979, the estimated amount of uncollected Federal and Indian royalties could range from $1.4 to $2.8 billion. The portion of the unreported royalties applicable to Indians could range from $10 to 20 million each year based on Indian oil and gas revenues which now exceed $200 million annually.

-- Central Office organizational weaknesses prevent top officials from initiating effective management decisions and improvements in field operations. Line responsibility, for example, goes directly from the Deputy Assistant Secretary (Operations) to Area Offices. By contrast, the Director, Division of Energy and Minerals has strictly an advisory function which may be accepted or rejected by field offices. However, this advice is provided only if and when requested.

-- The BIA Manual, which is the source of guidance and procedures dealing with all phases of BIA operations, is so outdated in some sections that its overall value can be seriously questioned. A review of the manual shows, and personnel in field offices have stated, that some sections have not been revised in 30 years.

-- The lack of programmed, independent and special operational reviews by the Central Office exacerbates the lack of current direction and policy to field offices. The DOI Office of the Inspector General (OIG) has done little in the way of recent reviews dealing with the leasing process to develop natural resources. Greater effort seems to have been placed on other audit phases, such as royalty and revenue collections. Admittedly, this is a highly important phase of work, but the auditors are not sure whether all leases have been identified and whether all revenues are properly collected and disbursed.

-- The Central Office has not properly directed field offices or adequately conveyed how certain important areas of BIA responsibilities should be implemented. For example, the Investigative Staff was unable to obtain consistent definitions of "Trust Responsibility" and "Self-Determination" or how the requirements of each could be combined to carry out BIA's

> leasing responsibilities of natural resources. It should be noted that the Director, Office of Trust Responsibilities stated " * * * the term (Trust Responsibility) has no meaning" and also added "* * * whatever that means."

The weaknesses enumerated above have permitted such loose controls that autonomous actions are very common, promoting an inconsistent pattern of activity from one office to another. In this regard, one Area Director stated that inadequate policy and communication has resulted in Area Offices meeting their own needs in an independent and uncoordinated manner. The result is that there may--in some cases--be 12 different ways of meeting a particular situation because there are many differences, including personalities, management styles, relationships with Agency Superintendents and tribes, etc. This Area Director further stated that he would like to see periodic reviews of his operations so that he might have some assurance of how well or how poorly he was doing. Some Agency Superintendents expressed similar views.

In addition to the many internal BIA weaknesses there are a number of external factors that also apply constant and severe pressures on the BIA decision-making processes, and contribute to the problem. For example, BIA must work with other DOI agencies that are not always in full agreement or share the same philosophy on management and program objectives. At the same time, BIA must closely work with many different tribal councils and individual allottees that represent differing interests and conflicts which may and have led to appeals of decisions made by field offices. Also, there are third parties representing large corporations who may have varying opinions as to what is a reasonable solution to the overall problems identified above. Further, the difficulties are compounded by the fact that the best interests of tribal groups may not always coincide with the best interests of individual Indian allottees.

Through treaties and legislation, the U.S. Government has recognized and guaranteed the status of Indian lands and provided to Indian tribes the rights-of-self-government. At the same time, the Government has assured a unique relationship with the Indians with respect to "Trust Responsibility," which includes trust holdings of Indian tribes and people. BIA officials stated that the provisions of these two guarantees, while they can be complementary, can also create conflict because the scope of "Trust Responsibility" has not been clearly defined.

Major Weaknesses

The above paragraphs have identified and summarized some of the significant deficiencies which the investigation has disclosed. However, in view of the long-standing weaknesses which continue to have adverse effects on the BIA management, a more thorough discussion of some of the major weaknesses follow:

BIA Lacks Timely and Reliable Information to Effectively Manage Indians' Natural Resources

BIA has jurisdiction over approximately 53 million acres of Indian land, but it lacks timely information and reliable statistical data to effectively administer these lands. Thus, BIA is constrained, even handicapped, in carrying out its responsibilities to protect the natural resources, enchance utilization and develop their potential for the overall benefit of Indian tribes and individual allottees. It is BIA's claim that it does not "manage," nor is it expected to; it simply "administers." The inability of BIA to generate meaningful information--timely, complete, and accurate--is a long-standing problem fueled by the absence of consistent Central Office policy, direction, and emphasis.

The data quandary in which BIA finds itself is demonstrated in both its FY 1986 and FY 1987 Congressional budget justifications. For example, in FY 1986, BIA cited FY 1983 figures and for FY 1987 BIA cited FY 1984 figures to support its "effectiveness" in developing mineral and mining resources. The 3 year old statistics used for each of those fiscal years were identified as the "latest data available." Similarly, information included in the FY 1986 budget justification under the heading Renewable Natural Resources Profile (Agriculture, Range, and Water) cites data not identified with any particular year. Elsewhere in the justification, other figures used have a "1983" attribution date, with no explanation on whether the information presented represents performance for FY 1983, calendar year 1983, or a combination of the two. Of even more striking interest concerning this lack of current information is a summary prepared in connection with the FY 1987 budget justification presented to the Congress relative to irrigation project acreage and estimated value of crops grown. There, BIA used "1982 crop year" information as the latest available to support its FY 1987 budget request.

Renewable Natural Resource Inventories Are Not Accurate, Complete or Timely

BIA has been largely unsuccessful in developing and implementing a reliable and timely land use inventory and production system. The present system, redesigned during 1980-1981, is called the Natural Resource Information System--Inventory and Production Report. Its stated purpose is to collect, collate, and report on the extent renewable Indian natural resources are used, such as farmland, rangeland, soil and water and conservation measures, irrigation practices, etc.

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Due to reporting errors, collection practices, nonreporting by some agency offices, and undetected software "gliches," only the FY's 1982 and 1983 reports had been completed as of March 15, 1986. Central Office officials do not consider either one of these reports to be accurate, complete or timely. In fact, one of the officials was reluctant to provide a copy of the FY 1982 report because of the general unreliability of the information included in the report. When a copy was finally received, it showed a 26 million acre error in the number of acres of land under BIA jurisdiction. (The actual number of acres involved was 53.9 million contrasted with 79.9 million reported.) This official stated that the FY 1984 report, soon to be published, will be the most accurate report prepared to date. However, publication will be delayed because of a 5 million acre error found in the draft report.

BIA's Problems with Managing Indian Royalties

An internal January 1985 Interim BIA Task Force/Study Group Report on Indian Oil and Gas Lease Administration and Royalty Management addressed to the Assistant Secretary-Indian Affairs, concluded:

> "It cannot be overemphasized that serious management and operational deficiencies exist that will require resolute corrective actions be taken. In short, trust obligations, respective to Indian Oil and Gas Management, need special attention and considerable improvement...
>
> "Direction and policy determinations are now needed to establish courses of action to effect short and long-term resolution of identified problems."

Some general observations and comments from this report follow:

Fragmentation of DOI Responsibilities

Indian oil and gas management responsibilities are divided among three separate Bureaus, each with its own regulations and procedures. The resultant fragmentation of overall responsibilities among the BIA, the Bureau of Land Management, and the Minerals Management Service (MMS) exacerbates the problem. For example, each of the three Bureaus is required to establish basic lease files and obtain data from the others in order to maintain such data. Further, the report notes, "Joint planning among the three Bureaus responsible for the management of Indian oil and gas leases is for the most part nonexistent."

BIA Management Commitment

Considering the importance of mineral lease management activity to the tribes and allottees as a source of continuing and increasing income, the Study Group found that "* * * BIA Management has been less than effective in forcing improvement of Indian lease management activities." (emphasis furnished) In addition, it was noted: "Most responsibility for energy and minerals activities has evolved to a staff located in Denver, Colorado. This staff is neither large enough nor technically qualified to effectively deal with the complex lease management activities on a day-to-day basis." As a final comment, the Study Group pointed out that detailed examinations of lease administration and royalty accounting activities are sporadic at best. In fact, according to the Study Group, its own examination of "* * * BIA activities appears to be the first internal examination of such activities that has ever been conducted by BIA."

Deficiencies in Collecting Gas and Oil Royalties

In an April 8, 1986, study of the Oil and Gas Royalty Management Program (Federal and Indian), the Investigative Staff reported on the serious deficiencies in DOI's handling of royalties due from Federal and Indian oil and gas leases, i.e., timely collection and disbursement of royalties. Many of the deficiencies noted were not new and have been previously identified as existing since about 1959 by the General Accounting Office, OIG, Congressional probes, and in other studies and reviews. This study indicated that unreported royalties due on Federal and Indian oil and gas leases may range from 5 to 10 percent. Applying these percentages to the $28 billion in royalties collected since 1979 could result in an estimated shortfall of $1.4 to $2.8 billion in uncollected royalties. The portion of the unreported royalties applicable to Indians could range from $10 to 20 million each year based on Indian oil and gas revenues which now exceed $200 million annually.

In another example, the disparity between State and Indian oil prices, in Wyoming (where State and Federal prices are comparable), is shown below:

Year	Undervalued Indian Oil Prices Less Than State Average ($ per barrel)	Possible Loss of Indian Royalties (in $ million)
1978	$2.50	$12.0
1979	2.48	12.3
1980	4.69	22.7
1981	6.64	38.1
1982	1.26	5.5
1983	1.27	5.7
Total		$96.3

NOTE: The Indian crude oil in the above example is all from the Wind River Reservation.

Based on this data and applying a 12.5 percent royalty rate, royalty under payments could be $12 million from Indian leases. Moreover, because of unpaid royalties due to underevaluation of crude oil, the Araphoe and Shoshone tribes from the Wind River Reservation entered into negotiations with the lessees (AMOCO and SOHIO) for settlement of unpaid royalties. Then, in 1981, these tribes also initiated a cancellation petition. However, on January 8, 1986, the Assistant Secretary - Indian Affairs, dismissed the cancellation petition and on February 6, 1986, the lessees withdrew their settlement offers.

Complaints by Navajo Area Allottees Concerning Oil and Gas Royalty Payments

The attorneys for Navajo Area allottees prepared a compilation of representative complaints from Indians who receive oil and gas payments. The transmittal letter indicated, "This information is provided to enable you to see the dimension of suffering that needlessly occurs because of the mishandling of oil and gas royalty and bonus monies by the Bureau of Indian Affairs and the Minerals Management Service."

In all, 33 separate complaints were documented and included:

-- Not receiving correct payment amounts; irregular payments received.

-- Has no copies of leases; no explanation of quantity of barrels and allotment.

-- No lease signed; lack of BIA cooperation.

-- Late payments; not being notified of latest drilling activities on allottee's reports.

-- No payments are being received; not receiving monthly or annual production reports.

Because of their respective problems with BIA over partial, late, and even nonreceipt of oil and gas payments, Indian recipients have experienced various problems, including repossession of trucks, trailers, and cars; termination of electric service; sale of personal belongings to help buy food and added indebtedness. In conclusion, a Central Office official, in a December 1985 proposal to the Acting Deputy Assistant Secretary-Indian Affairs (Operations), made the following statements:

> The Oil and Gas Royalty Management Program is a DOI problem involving several agencies.
>
> Stated simply, the BIA is not providing accurate and timely oil and gas royalty payments to the tribes and individual Indians.
>
> Breakdown of the MMS Auditing and Financing Systems has also revealed serious deficiencies in the BIA lease administration program at the Agency/Area/Washington levels and the Bureau's financial management system.

BIA Lacks Control Over the Appeals Process

Under the present appeals process, the Central Office is not (1) evaluating the Area Director's or Agency Superintendent's performance, (2) monitoring the basis or consistency of their decisions, and (3) accumulating statistics on the number of submitted appeals, their status and results. Of greater importance is the fact that there is no person or group in the Central Office tasked with the responsibility to review or track appeals on leases to assure that decisions are fair, timely, and consistent. These leases are the "bread and butter" of many tribes and allottees, including third parties to a lease who may be either individual Indians or non-Indians. These leases often involve large amounts of money and can have a severe financial impact on individuals, especially the Indians.

The appeals process is the mechanism within BIA whereby a party to a lease involving natural resources such as oil and gas, sand and gravel, hard minerals, and land for business enterprises, etc., can contest the decision of a BIA official. The regulations set forth in 25-CFR, Section 2, are generally followed by BIA in implementing its appeal process as discussed below.

On first glance, the regulations would seem to ensure a timely decision in the appeals process. However, a review reveals some significant shortcomings. For example, the process can be stalled at the outset if a Superintendent refuses, for whatever reason, to make an initial decision on a particular lease. Thus, no appeal can be made prior to the decision. This can result in the parties being powerless and unable to seek timely equity through the appeals process.

The next delay can occur at the Area Director's level where there is no time limit involved before he need make a decision on an appeal to the Superintendent's earlier decision. Therefore, the Area Director, like the Superintendent, can also thwart the appeals process simply by not taking any action. Central Office and field personnel advised that appeals can and do get lost for years after "falling through the cracks." Because there is a lack of data on the number of appeals submitted, handled, or lost, there is no way to assess the damage to aggrieved parties.

Currently, there is no provision under 25-CFR, Section 2, that addresses these problems. Central Office officials advised that proposed BIA changes to 25-CFR, Section 2, should rectify this. These officials also believe that other proposed changes will clarify the intent of certain time limitations set forth in this CFR to ensure that the parties obtain their "day in court" on a timely basis. This should liberalize the current narrow interpretation of a time limit to file an appeal notice.

Much of what is wrong with the appeals process exists in the Central Office where the attitude appears to be one of "let the field offices do their own thing and we have no need to know until the appeal gets to us." Thus, the Central Office's failure to follow good management practices involving adequate accountability and control allows the field offices to be totally on their own. As a result, errors and inequities could occur and go undetected.

INTERIM RESPONSE TO THE REPORT OF THE SURVEYS AND INVESTIGATIONS STAFF OF THE HOUSE COMMITTEE ON APPROPRIATIONS ENTITLED "LEASES AND PERMITS FOR DEVELOPING NATURAL RESOURCES ON INDIAN LANDS"

The Bureau of Indian Affairs has reviewed each of the items listed in the report as deficiencies and has a detailed response in the process of Departmental clearances. We are providing this interim response for the Committee's use pending receipt of the final response.

Items listed as deficiencies in the report can be listed in a few categories, such as those concerning oil and gas royalties; Central Office organization, policy and direction; trust responsibility and self-determination and others. A significant portion of the report concerns oil and gas royalty management. Many of the same issues are addressed in a recent General Accounting Office (GAO) report of March 18, 1986 entitled "Indian Royalties."

In general, we find much to agree with in the Surveys and Investigations Staff Report. In some few instances, however, we do not agree with a finding or we think the progress that the Bureau has made toward resolving a particular problem has not been adequately documented. The assistance and information provided us by way of the report is appreciated.

Mr. **Yates**. Is there anything else you want to say now in response to that, or would you rather wait?

Mr. **Swimmer**. I would only respond that I didn't come into the job thinking it was going to be easy. We have identified weaknesses, and there is no criticism of past management, but there are things to be done in the Bureau, although I think the Central Office needs to enhance what is going on in the field more so than building a bigger base of operation in the Central Office. So we are moving, and there are a lot of things that were commented on in that report that you just mentioned that we are acting on right now, and I think we will see some changes.

APRAPAHO AND SHOSHONE OIL AND GAS LEASES

Mr. **Yates**. All right. On a separate issue, the Arapaho and Shoshone Tribes wanted to cancel two oil and gas leases held by Amoco and Sohio on the reservation, alleging among other things that Amoco and Sohio failed to account for royalties due. Amoco and Sohio enjoined the cancellation action, so the tribes engaged in settlement negotiations resulting in a complex draft settlement.

Shortly before the case was to go to trial, the court action was dismissed, and on January 16, the Assistant Secretary dismissed the tribes' lease cancellation act. In February, Amoco and Sohio withdrew their settlement offer. Do you know the case?

Mr. **Swimmer**. I am familiar with some of the aspects of the case, but that is an issue that was, and I think still is, in litigation, and there was primarily a call by the Solicitor's Office advising me on the tack we should take in handling that particular case, and I don't believe that the case is completed by any means. There is still opportunity for settlement.

Mr. **Yates**. Here is an order of dismissal entered by the court on December 3, 1985. A suit by Amoco against the Department of the Interior, signed by the Magistrate.

Mr. **Swimmer**. It is an involved and complex case. It started several years ago, and again I was following the advice of our legal counsel, and I don't believe that anything that we have done prejudiced the tribe in any way and that, in fact, it will lead to further negotiations and possible settlement. But it is a litigation matter.

Mr. **Yates**. Are the Arapahos and Shoshones unhappy about this? Let's see what the tribes say. This is a resolution by the tribe. Therefore, be it resolved this body agrees with the Arapaho Tribe. That would be the resolution of the National Congress of American Indians. And it says—this is a letter delivered to you by hand, you being the head of BIA, and I don't know whether you were on board on February 18 or not, the date of the letter.

Mr. **Swimmer**. Yes.

Mr. **Yates**. Do you know about Suzan Harjo's letter?

Mr. **Swimmer**. I recall seeing it.

Mr. **Yates**. She says here, "On February 13, NCAI President Reuben Snake and myself met with Assistant Secretary Swimmer on a number of issues, including this one. His response was that he had attempted to help the Tribes by leaning on the oil company. I related this response to the attorneys for the Tribes and to the

Arapaho Tribal Chairman, none of whom felt that this was a credible response."

This was a letter to me.

"I have enclosed, also, for your information a copy of our testimony before the Senate Select Committee on Indian Affairs for their fiscal year 1987 budget oversight hearing today."

They go along and tell you what happens. And the resolution says "Be it further resolved, that the actions of the Department of the Interior in this matter served to encourage these two oil companies and others not to be concerned with their oil and gas leases being cancelled on Indian lands regardless of the scope of lease violations; and,

"Be it finally resolved, that the National Congress of American Indians take appropriate actions to urge the Interior Assistant Secretary for Indian Affairs to rescind his policy action, because it is a precedent-setting case, and because the Department of the Interior rightfully defended it."

You acted on the advice of counsel. Is that the counsel that was in yesterday?

Mr. SWIMMER. The Solicitor's Office.

Mr. YATES. He told you to dismiss it?

Mr. SWIMMER. We discussed the case and believed that that was the best thing to do to protect the interest of the tribe at the time. I believe we weren't dismissed with any prejudice, and I believe there is an opportunity to go back in and follow up, but I think it would be better to give you a response on it in writing and try to explain it.

Mr. YATES. Why dismiss it? What is the purpose of the dismissal? They have got an active case, the Indians and the oil companies are still in a confrontation. Why dismiss it? Doesn't that put the tribes at a disadvantage?

Mr. SWIMMER. In this particular case, I don't think that it did, and I think there are other circumstances that we would tell the committee about that probably would show that there are opportunities for settlement and to satisfy the interest of the tribe and take care of the litigation by other action.

Mr. YATES. As I understand the facts, there was a settlement pending when the motion to dismiss was made, and that after the motion to dismiss was approved by the court, it suddenly is withdrawn by the oil companies, the offer of settlement, so you don't have the offer of settlement pending at the present time.

Mr. SWIMMER. I am not sure that that is the case. I am not sure there isn't an offer, and there is opportunity for an offer.

Mr. YATES. Respond for the record please.

Mr. SWIMMER. I would like to furnish more information, because it is involved.

[The information follows:]

SHOSHONE ARAPAHO LEASE CANCELLATION ON THE WIND RIVER RESERVATION

The Tribes petitioned the Department in November 1981 to cancel Amoco's Leases. In August 1982 an Administrative Law Judge was appointed to take evidence on the petition. Shortly thereafter, Amoco sued in federal court in Wyoming to enjoin the administrative proceedings on a variety of grounds, including bias and prejudice of the decision makers. In January 1983 the government's motion to dismiss Amoco's suit was denied. Meanwhile, however, the lawsuit and administrative proceedings were stayed while Amoco and the Tribes attempted to negotiate a settlement. The Tribes never intervened in the litigation between Amoco and Interior.

In December 1985, while settlement discussions were still continuing, the judge threatened to set the issue of institutional bias for trial if there was no settlement by December 31. At that point Amoco and the Department agree that if the Department dismissed the petition without prejudice, Amoco would agree to dismissal of the lawsuit. The Tribes' attorneys were advised before the decision was made. Unfortunately, we understand that Amoco later withdrew its settlement offer—ostensibly because the price of oil had fallen so dramatically. As the administrative order of dismissal makes clear, if the Tribes desire, they may refile their cancellation petition with the Department at any time without prejudice.

STATUS OF PENDING PETITION

Mr. YATES. What is the status now? Is there a cancellation petition pending, a petition to cancel the oil leases?

Mr. SWIMMER. I really can't tell you.

Mr. YATES. All right. You will, though, in your reply.

Mr. SWIMMER. I will find out.

Mr. YATES. Well, in your letter you wrote on January 13th to Thomas Acevedo, a lawyer in Boulder, Colorado, and Kenneth Guido, in Washington; it says "I am writing to advise you, as counsel to the two tribes in the above-referenced matter, that in the interests of promoting settlement and avoiding burdensome, divisive and collateral litigation that has delayed consideration of the matter, I am dismissing the petition without prejudice to the rights of the tribe to refile the petition at any time in the future.

"As you know, the tribes and the lessee companies have been engaged in settlement negotiations for two years now. Recently, Judge Bremmer indicated he would now set the case for trial. To avoid the necessity of proceeding with the collateral litigation while efforts are still being made to settle the underlying controversy, the companies offered to dismiss their suits against the Department without prejudice if the Department would, in turn, dismiss the administrative proceedings stemming from the tribes' petition, also without prejudice.

"This offer has been given careful consideration, and the Secretary has now delegated to my office the responsibility of addressing this controversy with a recommendation the companies' offer be accepted."

According to your letter, "The Secretary has now delegated to my office the responsibility of addressing the controversy with a recommendation." Does this mean the Secretary recommended the companies' offer be accepted?

Mr. SWIMMER. No. Mr. Chairman, I do anticipate that there will be additional litigation, possible litigation, and even settlement talks. The case began in the Interior Department several years ago under the previous Secretary, and several issues came up during the litigation that caused prejudicial remarks to be made during the case that would both affect the potential Indian settlement and the issue toward the energy companies, and it was believed that in light of the problem that they had, that the best thing to do was more or less to start over and see if we could find someone who was certainly nonprejudicial and would be able to give the issue a fair hearing and not prejudice rights, particularly of the tribe.

The Secretary, having been on board previous to that time, also felt that it was important that he not be personally involved in it, so he has asked me to see if I could move the litigation along and get a solution here that would not be tainted by what had been in the past prejudicial testimony and information given by people both in and out of the department.

Mr. YATES. You say further, "I conclude it is in the best interests of all parties to eliminate the confusion created by the administrative proceeding and litigation by dismissing both the cancellation petition and the lawsuit. This action gives everyone the opportunity to work from a clean slate and facilitates continuation of settlement negotiations. If negotiations fail, the tribes may then reevaluate their remedies, as over four years have passed since the filing of their cancellation petition. They may re-file that petition."

Then you say, "The Department is committed to fulfilling its responsibilities with regard to oil and gas production on the Wind River Reservation." What does that mean?

Mr. SWIMMER. Simply that we are committed to being sure the Wind River Reservation gets the right price and terms, or whatever, and whatever contracts they enter into be fair, unbiased and competitive, an arms-length situation.

Mr. YATES. I don't understand what happened here. The tribes filed a petition to cancel their leases. Do you have the right to approve that, or must they go to court?

Mr. SWIMMER. I think it would have to go to court if the energy company chose for it to. I don't think it could be unilateral except by agreement.

Mr. YATES. Okay. Give us a comprehensive answer to that. Have they filed another petition to cancel?

Mr. SWIMMER. I don't know if they have or not.

Mr. YATES. Would any of your staff know that?

Mr. SWIMMER. I don't think so. The Solicitor might, but I think I would know if they had, and I haven't seen a petition yet, and it is a matter under current consideration.

REORGANIZATION OF CENTRAL OFFICE MANAGEMENT

Mr. YATES. You have reorganized the department, you have four new deputies. Will the four new deputies constitute an additional layer of management in the Bureau, or will they be in lieu of current positions?

Mr. SWIMMER. They are in lieu of, and there would not be any additional positions. Instead of having a single Deputy Assistant Secretary who, in the past, had been considered to be the Commissioner, I chose to be both of those positions and have four deputies representing the four areas of the Bureau's interests.

Mr. YATES. What level of funding would be required for the four positions?

Mr. SWIMMER. It will be virtually the same as before.

Mr. YATES. Are the funds available?

Mr. SWIMMER. Yes.

Mr. YATES. In what account?

Mr. SWIMMER. I will refer to Tom.

Mr. **Stangl**. It depends on which deputy. It is in the general administration account. The deputy for Inidan Services is in the community services general, and the Trust and Economic Development deputy is under trust responsibilities——

Mr. **Yates**. If I understand what Mr. Swimmer said, there won't be any savings by this reorganization.

Mr. **Stangl**. There won't be any additional costs either.

Mr. **Yates**. No savings or costs, it will be at roughly the same level?

Mr. **Stangl**. And the education deputy is also under general administration.

Mr. **Yates**. You had better speak up. The reporter is straining.

ALASKA REDUCTIONS

All right, let's talk about another budget savings, $12,038,000 to be derived by eliminating or reducing funding of a variety of BIA programs in Alaska. And the justification says the reason for the reduction is the improvement in native economic status, the absence of large blocks of trust land or treaty rights, the state taking on greater responsibility for serving Alaskan natives with education, and welfare assistance. How does that work?

Mr. **Swimmer**. In fact, there have been some transfers to the state earlier in the education program and in the general welfare program. Those have been assumed by the State of Alaska.

Mr. **Yates**. What consultation was carried on with the Alaskan natives about these reductions, or with the state?

Mr. **Swimmer**. We have had very limited consultation. With the State of Alaska, there has been some discussion with our area office there, state officials, but it has been limited and not too much consultation directly with tribal groups in Alaska.

Mr. **Yates**. How about the Governor's office?

Mr. **Swimmer**. I would say limited.

1985 STUDY ON THE ALASKA NATIVE LAND CHAIMS SETTLEMENT ACT

Mr. **Yates**. Here we have a letter, dated February 26, from Governor Sheffield of Alaska, and he said: "Dear Mr. Chairman: The budget proposals made by the President to provide services to American Indians and Alaska Natives during FY87 greatly reduce the commitment to education, health, housing and social services. In Alaska, we are particularly alarmed"—that is a red-flag word, "alarmed"—"that Alaska Natives and the State of Alaska have been singled out as a matter of policy for severe reductions in services through the Bureau of Indian Affairs (BIA). The Bureau is recommending a reduction of $12.0 million for financial support of programs in Alaska, apparently justified because of the implementation of the Alaska Native Claims Settlement Act (ANCSA) and the previous assumption by the State of greater responsibility for education and welfare programs."

And then he recites, he lists where the cuts are to take place and the loss in FTEs, which is minus 72, and then he goes on to say, "We are concerned on two levels. First, the BIA has apparently reached this policy conclusion without consultations with either the Alaska Native community or the State of Alaska. In addition, we note that the 1985 study on the Alaska Native Land Claims Settlement Act still has not been finalized by the Department of the Interior."

And then he has a recitation of a review by the Congress, directing the Secretary to submit annual reports to Congress. And "At the beginning of the first session of Congress in 1985 the Secretary shall submit, through the President, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under this Act. . ."

"That report", he says—that is the beginning of 1985. Then he says, "That report remains in draft form and to our knowledge, policy recommendations have never been finalized." Is that true?

Mr. SWIMMER. Yes.

Mr. YATES. Why have they never been finalized?

Mr. SWIMMER. It has been in draft form, it is currently being reviewed by the department and the different agencies within the department.

Mr. YATES. A year-and-a-half later. How long will the review take?

Mr. SWIMMER. I can't answer for the entire department. There are several agencies within the department that have to look at it also. Our review is virtually complete as to most of the content of the report. We have also sent it out—I believe I am correct in this—we have asked for some comments from the state and native groups there on some of the parts of the report.

Mr. RYAN. My understanding is that the Secretary was concerned—

Mr. AUCOIN. Excuse me. Who is the witness?

Mr. RYAN. Frank Ryan.

Mr. SWIMMER. Frank Ryan is the Deputy for Trust and Economic Development.

Mr. AUCOIN. You have an answer to the question?

Mr. RYAN. Yes. I wanted to supplement the answer to the question by saying it is my understanding——

Mr. YATES. You had better speak up.

Mr. RYAN. It is my understanding the Secretary was concerned about getting as much feedback as he could.

Mr. AUCOIN. Secretary Hodel?

Mr. RYAN. Yes.

Mr. AUCOIN. He is getting about a year-and-a-half's worth?

Mr. RYAN. There was a Commission set up by the Governor, himself, to study the issue, and the Secretary is also concerned about local concerns under the 1991 legislation, so it is my impression, after having gotten that kind of feedback about that, that the department will be capable of preparing a position. So I wanted to add that as a means of explaining that.

Mr. YATES. Why should it take a year-and-a-half to complete it? I don't know how to put that look in your eyes on the record.

Mr. RYAN. I am peering over my glasses.

Mr. SWIMMER. There are policy considerations that have to be made after the record is issued and the report is in draft stage and it is in review in the department.

Mr. **Yates**. What is the truth, Mr. Swimmer? Is the truth the fact the budget people have said you have to cut this $12 million, and you tried to rationalize it as best you could?

Mr. **Swimmer**. No, Mr. Chairman. The truth of it is, with regard to the report, it is in fact in draft stage, being reviewed, and it has been talked about at length within the department and was not part of the consideration for proposing reduction in the services to Indian people of Alaska.

As far as reduction in Indian services to people of Alaska, it is in fact, based on both a budget consideration, that we are attempting to stay within the deficit reduction budget constraints this year, and we also look at areas where native funding is provided in the State of Alaska. The information I have been able to put together indicates that Alaskan natives, as a group, are funded, and special program funds to native Americans are funded at approximately twice the level of natives in the Lower 48.

Mr. **Yates**. The Governor continues, he says, the report you were supposed to make, which is now winding its way slowly through the department, was intended by Congress to provide for the orderly and public examination of effects and provide a forum for examining the policy options. The Governor concludes in this letter, which I will make a part of the record, "the administration appears to have pre-empted the expressed directions of the Congress and the opportunity for the Congress and the public to review the effects of ANCSA prior to considering the actions now being advocated by the Department of the Interior."

He then says—and if you want to reply as I read this at any point, please feel free to do so—"Second", the Governor says, "we are concerned that the programs proposed for reduction and/or termination are not related to the State's previous assumption of education and public assistance functions. They are more directly related to the maintenance of those programs designed specifically to serve not only the human resources needs but also the historical and cultural needs of the Alaska Natives within a framework of self-determination through traditional Native structures

"As the Department recognizes, the State of Alaska has assumed those education and public assistance progams that can be assimilated into the general service delivery system of state government. The termination of these additional services would not necessarily result in the same assumption by the State and are fundamentally different in character."

Do you want to come up, Mr. Ryan? Oh, no, okay.

Mr. **Ryan**. I am more comfortable here.

Mr. **Yates**. You have found yourself a bomb shelter. "Any redirection or termination of such services by BIA or Congress shall not be made on the premise that they will automatically be continued by the State."

Then there is an IHS proposal. We will ask IHS about that when they come in.

Johnson-O'Malley Education Services, he is opposed to transfer.

"The Administration's housing proposal, as we understand it, is basically for no commitments to new construction and for use of a voucher program to replace public and Indian Housing programs now administered through the Department of Housing and Urban

Development. We do not believe this policy will work in areas where there is little available housing stock."

Well, "In summary", says the Governor, "we cannot endorse the Indian program policies that are evident in the Administration's FY 87 budget proposal. As the deliberations over the proposals continue, it is imperative that the Congress remain committed to these services in order to maintain the full range of programs that have been developed."

This letter may go into the record.

[The letter to Sidney R. Yates from Governor Bill Sheffield follows:]

ALASKA

BILL SHEFFIELD
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 26, 1986

The Honorable Sidney R. Yates
Chairman
Subcommittee on Interior and
Related Agencies
B-308 Rayburn House Office Bldg.
Washington, D.C. 20515

Dear Mr. Chairman:

The budget proposals made by the President to provide services to American Indians and Alaska Natives during FY 87 greatly reduce the committment to education, health, housing and social services. In Alaska, we are particularly alarmed that Alaska Natives and the State of Alaska have been singled out as a matter of policy for severe reductions in services through the Bureau of Indian Affairs (BIA). The Bureau is recommending a reduction of $12.0 million for financial support of programs in Alaska, apparently justified because of the implementation of the Alaska Native Claims Settlement Act (ANCSA) and the previous assumption by the State of greater responsibility for education and welfare programs.

The cuts proposed by the Bureau in Alaska are to occur in the following areas:

Program	$000	FTE*
Indian Child Welfare Act Grants	$ -710	--
Small Tribes Core Management Grants	-679	--
ANILCA Programs	-700	-10
ANCSA Cemetery/Historical Sites	-1,568	-20
Facilities Management	-1,248	-7
Tribe/Agency Operations	-6,336	-32
Housing	-797	-3
Total	$-12,038	-72

* Full Time Equivalency Positions

We are concerned on two levels. First, the BIA has apparently reached this policy conclusion without consultations with either the Alaska Native community or the State of Alaska. In addition, we note that the 1985 study on the Alaska Native Land Claims Settlement Act still has not been finalized by the Department of the Interior.

Section 23 of ANCSA, Review by Congress, directs the Secretary to submit annual reports to the Congress, and a major report was due in 1985 as directed by the following provision:

> At the beginning of the first session of Congress in 1985 the Secretary shall submit, through the president, a report of the status of the Natives and Native groups in Alaska, and a summary of actions taken under this Act, together with such recommendations as may be appropriate.

That report remains in draft form and to our knowledge, policy recommendations have never been finalized. Further, during the preparation of the report and subsequent field hearings, considerable criticism was directed at the draft findings.

Congress has further expressed its concern about the relationship between Alaska Natives and the Federal government by providing in section 2 of ANCSA, Declaration of Policy, subparagraph (g) "no provision of this Act shall be construed to terminate or otherwise curtail the activities of the Economic Development Administration or other Federal agencies conducting loan or loan and grant programs in Alaska." In our view, the report was a vehicle mandated by the Congress for the orderly and public examination of ANCSA effects, and provided a forum to examine such policy options as are now being recommended by the Administration. By its actions, the Administration appears to have pre-empted the expressed directions of the Congress and the opportunity for the Congress and the public to review the effects of ANCSA prior to considering the actions now being advocated by the Department of the Interior.

Second, we are concerned that the programs proposed for reduction and/or termination are not related to the State's previous assumption of education and public assistance functions. They are more directly related to the maintenance of those programs designed specifically to serve not only the human resource needs but also the historical and cultural needs of the Alaska Natives within a framework of self-determination through traditional Native structures.

As the Department recognizes, the State of Alaska has assumed those education and public assistance programs that can be assimilated into the general service delivery system of state government. The termination of these additional services would not necessarily result in the same assumption by the State and are fundamentally different in character. Any redirection or termination of such services by the BIA or Congress should not be made on the premise that they will automatically be continued by the State.

We would also like to express our concerns about other policy initiatives proposed by the President. The Indian Health Service (IHS) proposals would result in a moratorium on hospital and clinic construction, as well as in a phasing in of a redistribution of IHS resources. These policy proposals create a lot of uncertainty about the future availability of health services and seem to ignore the conditions that exist in areas where access to and availability of health services remain a critical issue that might only be made more difficult as a result of these new policy approaches. We recommend that the proposals be thoroughly examined in consultation with affected Alaska Natives with health care organizations before they are permitted to move forward.

Johnson-O'Malley education services are proposed for transfer to the United States Department of Education from the BIA. While we have registered our strong feelings about the policy of the BIA toward Alaska, nevertheless the education proposal must be regarded on its own merits. We believe this proposal needs to be examined to ensure that the intent of the program will not be weakened but will be strengthened by any Administrative restructuring.

The Administration's housing proposal, as we understand it, is basically for no commitments to new construction and for use of a voucher program to replace public and Indian Housing programs now administered through the Department of Housing and Urban Development. We do not believe this policy will work in areas where there is little available housing stock. Accordingly, there is little realistic possibility that this approach will result in affordable and satisfactory housing being made available to rural Alaska Natives. We again suggest that these proposals be analyzed with participation from officials of the housing agencies, who are most knowledgeable about housing needs throughout Alaska.

In summary, we cannot endorse the Indian program policies that are evident in the Administration's FY 87 budget proposal. As the deliberations over the proposals continue, it is imperative that the Congress remain committed to these services in order to maintain the full range of programs that have been developed.

Thank you for the opportunity to comment.

Sincerely,

Bill Sheffield

Bill Sheffield
Governor

cc: Senator Mark Andrews

Mr. YATES. Now Mr. AuCoin has some questions. Did you want to reply before I asked——

Mr. SWIMMER. No.

Mr. YATES. We will let you reply to the Governor for the record.

[The information follows:]

BIA RESPONSE TO GOVERNOR SHEFFIELD'S LETTER ON ALASKA REDUCTIONS

Governor Sheffield's letter expresses concerns about Indian policy and the funding of Indian programs in Alaska. Our comments pertain to those concerns that relate to Bureau programs.

We wish to assure that there is no intent to change the special relationship that we have with Alaska Natives or their tribes. There is also no intent to change policy relating to Alaska Natives without their input and consultation with the State of Alaska and other concerned groups. There is, however, a concerted effort on the part of this Administration to reduce expenditures and achieve a balanced budget. The Bureau, through extensive review has identified nationally a total reduction of $66,707,000 from the FY 1987 base funding. Alaska's share of that was $10,662,000 (a $12,038,000 reduction; withdrawal of requests for $412,000 for Native Group Grants and $750,000 for land selection costs for three corporations; while adding $2,538,000 for cadastral survey and allotment work.) While it is true that Alaska is receiving a slightly larger share of the reduction, it is not as disproportionate as the Governor has been led to believe. Some of the cuts referred to can be specific only to Alaska, because nowhere else are there such programs (e.g. ANCSA Cemetery/Historic Site investigations, which will still have $732,500 in tribe/agency funds after the $1,568,000 reduction, and which will continue at a reasonable pace in concert with other land conveyancing in Alaska).

The facilities management reduction is similarly a unique savings, in that with all school and facility maintenance turned over to the State, there is little justification to keep the large federal complex at Bethel. This savings of $1,248,000 should have no effect on direct services to Alaska Natives. The savings of $700,000 from the ANILCA fund is possible because some of that work is directly preparatory to cadastral surveys and will be continued from the proposed increase for survey funds.

While a program-by-program review of where the Alaska reductions occurred could be included here, it may not be of significant value since individual Alaska Native groups may choose to request, by reprogramming, changes in how these funds should be allocated and spent after they are appropriated. We will certainly support such reprogramming requests as we recognize that true self-determination and priority setting for Federal funds go hand in hand.

At the time this budget was developed, there was no indication that the State of Alaska's revenues or subsequent cooperation would be so significantly lessened. We appreciate the State's legitimate concern regarding any assumption on our part that they will provide services where we curtail them. Such an assumption has not been made.

The Administration's reduction for BIA in Alaska needs to be looked at in context with other funding for the Alaska Natives. A compilation of FY 1986 funding of all Federal programs for American Indians and Alaska Natives (completed by the Office of Management and Budget) revealed that Alaska Natives were receiving nearly double what other American Indians were receiving on a per capita basis (when including the programs of IHS, HUD, etc.) While travel, construction and salaries are indeed higher in Alaska, this seemed to the Administration to be disproportionate (especially since there are no large blocks of tribal reservation land and resources to manage as there are in the lower 48).

The Governor's letter also addressed the "1985 study", or "section 23 report," which was to have been submitted to Congress at the beginning of the first session of Congress in 1985. The report concerns the status of Natives and Native groups in Alaska, and a summary of actions taken under this Act, together with such recommendations as may be appropriate. A draft fact finding report, including all but the recommendations, was finished in June 1984 and was circulated widely in Alaska. Hearings were held in November and December of that year and in January 1985, and a task force was formed to analyze the results of the hearing testimony, written and oral comments on the draft, updated information on current court cases, etc. That group met and originally came up with 126 different issues to consider. These were refined and reduced to some 37 issue areas of consequence enough to warrant full issue analyses. These analyses were then accomplished and issue analysis papers with optional solutions were drafted and consolidated with their own executive summary into a "Draft Part VI, Conclusions and Recommendations," in May of 1985.

Other related studies were being conducted nearly simultaneously. (The Secretary's own Section 813 of ANILCA subsistence study; The Alaska Native Review Commission's, "A Village Journey," authored by Canadian Justice Tom Berger; The Governor of Alaska's Task Force on the Federal/State Native Relationships; and the Alaska Federation of Natives' (AFN) study and legislation preparation on the so-called 1991 issues.) In an effort to include all the potential data and analyze its impact, the Secretary chose to delay his report until these could be reviewed and incorporated as appropriate. The last two of these, AFN's legislation and the Governor's Task Force report, have only recently been received and reviewed.

The Assistant Secretary—Indian Affairs is committed to taking the lead to get this report to Congress before the end of this session and every effort will be made to do so.

Mr. YATES. You may proceed, Mr. AuCoin.

FORESTRY MANAGEMENT BACKLOG

Mr. AUCOIN. Thank you, Mr. Chairman.

Mr. Swimmer, can you tell the committee what kind of progress you can report to us today on the BIA's effort to catch up with the estimated one million acre BIA forest management backlog?

Mr. SWIMMER. We have the backlog down to about a 50 percent level as of this current fiscal year, and we believe that the level of funding that we have proposed, while it might stretch out the reduction of a backlog, that we can, in fact, keep on target and continue to reduce the backlog and get it to completion, I think it is predicted to be 1995.

Mr. AUCOIN. So it is half complete, half caught up?

Mr. SWIMMER. Yes.

Mr. AUCOIN. Do you agree with the GAO's 1976 conclusion that the failure of the Bureau to do the reforestation was, in the GAO's words, an apparent breach of the fiduciary duty owed to the Indian tribes? That was what GAO felt.

Mr. SWIMMER. It would be difficult for me to say yes or no to that issue based on a 1976 study.

Mr. AUCOIN. Have you read the study?

Mr. SWIMMER. I have not. If the study reflected that we were not meeting our trusteeship as far as forest lands, then that would be a true statement I would think.

Mr. AUCOIN. That is what the study concluded. I urge you to read the study, particularly with regard to the budget issue.

Mr. SWIMMER. I will. I am very pleased with the work we have done in the forestry area.

TRANSFER OF FOREST DEVELOPMENT FUNDS TO TRIBE/AGENCY

Mr. AUCOIN. Well, you indicated that the budget request will keep the program on target, but it was in response to that report that this committee initiated a 10-year, $5 million-per-year program to catch up on those needs, because of the one million acres of forest lands that had been mismanaged, mismanaged as determined by the report.

I guess my next question is, does the BIA propose placing about $2.4 million of the $4.4 million budget request for the backlog into the tribe agency operations account in this budget submission? That is true, isn't it?

Mr. **Swimmer**. I will let Mr. Stangl address that. I think that is an ongoing program.

Mr. **AuCoin**. Mr. Who?

Mr. **Swimmer**. Stangl.

Mr. **Stangl**. $2.4 million of the forest development funds were transferred to tribe agency operations level. The basic decision that was made here is that these funds are for locations where there is a forest development program that is ongoing and continuous.

Mr. **AuCoin**. That is a regular program, right?

Mr. **Stangl**. It was only put at those locations where that is the case. Those locations have forest development funding in a kind of project-oriented approach, those were retained at the central level.

Mr. **AuCoin**. But those funds in the tribe/agency operations account do not have to go to the eradication of the backlog, do they?

Mr. **Stangl**. They have been so designated. Where there has been policy direction going out during the planning process for the next fiscal year, that policy pretty much tries to maintain that integrity.

Mr. **AuCoin**. Tries to, but it doesn't earmark those funds.

Mr. **Stangl**. Well, there is the opportunity to show exactly how much is for forest development activities in our planning system for fiscal year 1988. We have that as a separate line item. I might also point out there are considerable funds in the tribe/agency before this transfer that were used on forest development.

Mr. **AuCoin**. That is not my question, though. My question is the million-acre backlog that was a result of the agency's own mismanagement, which prompted this committee, on the basis of the GAO report to launch a ten-year program, to eradicate the backlog. My understanding is that the budget submission puts $2.4 million of that into the $4.4 million budget request for the backlog into the tribe agency operations account, which is not earmarked and could be used for other purposes other than the eradication of the backlog.

Mr. **Swimmer**. It could be. It could also have additional money added to it if the tribe sets its priority as forestry backlog.

Mr. **AuCoin**. The purpose of eradication of the backlog stems from the belief that it was Federal agency mismanagement that caused the backlog, and this investment of dollars earmarked by the Federal Government was to correct a Federal mismanagement action. And that is why I believe it is a mistake to put these funds into something that goes for more general purposes than non-earmarked purposes.

In fact, it seems to me that is an evasion of the Bureau's responsibility to clear up the backlog.

Mr. **Swimmer**. I think it would be the opposite, too. I think it is important, if we talk about our desire to better manage the forestry for the tribes, that it is extremely important we get them involved in that process and that eventually the tribes make the determination that it is something that is in their interest to do, and I think that one of the objectives here——

Mr. **AuCoin**. Excuse me, repeat that. What was that again?

Mr. **Swimmer**. That it is important for us to have the tribes work with us to recognize what their objectives are, that if we are mismanaged——

Mr. AuCoin. Work in consultation with you?

Mr. Swimmer. That is right. If we are mismanaging their forest, they need to know that, and they also need to, more or less, buy into it that they should be part of the solution to help us reach that.

Mr. AuCoin. More of a partnership approach to the solution of the problem?

Mr. Swimmer. Yes, I think so.

Mr. AuCoin. Let me read you from the testimony presented to this subcommittee on March 6 of this year by Mike Clements, the President of the Intertribal Timber Council, who commented on this very proposal that I am raising in the committee today. Here is what he said, these are his words, "I request that the $2.4 million in special forest development backlog reduction funding transferred to that account be returned to the forestry program on general grounds the creation of this new account is being done with no tribal consultation."

That doesn't sound like a partnership to me, but—that is a parenthetical comment of mine. Going on with his comments, "The Federal Government could be able to sidestep its obligation by saying it is up to the tribes to decide how to use those funds, and if the administration proposes reduced budgets, the tribes would be forced to choose between the insufficiencies."

How does that represent a partnership, open consultation, and why should we do this when the tribes don't even want it?

Mr. Swimmer. We are trying to afford the tribes the flexibility of determining their priorities, making it easier for them to do so, and at the same time be sure that the issues, such as forestry and others that they deem to be very important can have the funds added to it, as well as taken away if that is their choice.

Mr. AuCoin. What other purposes are served by that act?

Mr. Swimmer. Primarily, it is the flexibility of the tribes to be able to spend the money in a way that they believe is in their best interest with as little difficulty as possible, and reprogramming funds in the current budget year.

Mr. AuCoin. What things would be examples of what the tribes do in making use of those funds?

Mr. Swimmer. They might very well decide to add more money to the forestry program and take more money out of employment assistance, employment assistance category being basically a job program to help people get a private sector job, and they would move money there and put it into the forestry program, which could create more jobs and lessen the need to have employment assistance.

Mr. AuCoin. Employment assistance may be another activity funded?

Mr. Swimmer. That is right.

Mr. AuCoin. What would be another example besides those two, forestry and employment assistance?

Mr. Swimmer. It is $295 million worth of programs.

Mr. AuCoin. You see what the tribes are afraid of is by causing this program to be the source of the funding to eradicate the backlog, that this is a function then that is funded by this multipurpose account, and if that multipurpose account is reduced in a future budget request, the obligation of your agency, whose mismanagement caused the shortfall and the backlog in the first place, is going to delay the date by which that reforestation backlog is eradicated, and I happen to agree with the tribes.

Mr. SWIMMER. That is a simple reduction in the forestry budget.

Mr. AUCOIN. That would accomplish the same purpose.

Mr. SWIMMER. But this way at least the tribes have the opportunity of addressing the needs, if that is where they want to prioritize their funding.

Mr. AUCOIN. Why cut it? I mean, it was your mistake, not theirs. You weren't there at the time, your agency's mistake. It was mismanaged. The GAO said so.

Mr. RYAN. Mr. Secretary. I attended a March meeting of the Intertribal Timber Council, and they expressed their concerns. I informed them we would be considering conditioning the sizes of allotments so that the resources in the forestry development area could not be rebudgeted for other activities. The bottom line effect would be that for a forestry development item within a tribe/agency, that could have an effect of protecting them and making it possible for other rebudgeting within the tribal agency to support the forestry development.

Mr. SWIMMER. You mean hold harmless?

Mr. RYAN. That is right. No one would be able to take funds away from it, but they would, under this budgeting method, be able to add funds to it. That seemed to me to be—well, basically everyone there seemed to like the idea and was encouraging us to consider doing something.

Mr. AUCOIN. So you are saying after moving it into this new account, you would see to it that the spending level for the reforestation backlog would be the same level as before if you transferred it over?

Mr. RYAN. What I am saying, within the many, many line items, budget items that are within tribe/agencies, that we would say this one is one you couldn't take money out of, but you could put money from the other ones into it, and for those tribes that have significant timber resources that want to budget, focus or target their resources on forestry, they would have that opportunity through this budget method.

Mr. AUCOIN. Can you do that now with the current tribe/agency definition?

Mr. SWIMMER. Reprogramming is allowed now. At certain levels of reprogramming, they have to go to the agency in the area and the central office to get it done, but it can be permitted; and then there is a limit which Congress has to agree to reprogram also. Right now, we don't have any authority other than what it is right now. It is a hold harmless. It is fixed in the priority system at that level and can't be changed except by such a request.

Mr. AUCOIN. The cut being proposed for this purpose of eliminating the backlog is $3.75 million. This may be one of the biggest, if not the biggest, program reduction in your whole budget. It is a cut of nearly 50 percent. I am wondering why, given what the GAO reported, why a cut of that magnitude? Why is this program being singled out for that kind of a cut?

Mr. SWIMMER. Well, I would suggest there is some budgeting effort there in the idea that we can go back to the targeted amount of about $5 million, which was anticipated to be able to reduce this backlog and that we are leaving the pre-1985 amount in there. In other words, we are reducing what has been added on, but we are back to the original scheme of trying to reduce the backlog in an orderly fashion, and we maintain the program at about five million.

Mr. AUCOIN. Now, if the five million target figure was set in 1977 and adjusted for inflation, what would that be today?

Mr. SWIMMER. I don't know.

Mr. AUCOIN. Substantially more than $5 million, wouldn't it?

Mr. SWIMMER. Yes, it very well could be.

Mr. AUCOIN. Let me ask you—what did you request of the department for this program?

Mr. SWIMMER. We requested from the department the $5 million plus, the 1985 level.

Mr. AUCOIN. So you felt that was the level that would be necessary?

Mr. SWIMMER. Yes.

Mr. AUCOIN. And the department disagreed with you and cut you back down to this level?

Mr. SWIMMER. No, that is what was funded. The base was the $8 million. When we submitted our budget to the department, we requested $5.7 million.

U.S.-CANADA SALMON INTERCEPTION TREATY

Mr. AUCOIN. It is my understanding the administration has recommended only $1 million for BIA funding to carry out the tribes under the U.S.-Canadian Salmon Interception Treaty, yet the Pacific Salmon Commission, comprised of representatives of the tribes, the State Fish and Wildlife agencies and representatives of the Federal Government, have recommended $2.3 million, that includes the Federal representatives.

Why is the BIA acting against the advice of the Commission?

Mr. SWIMMER. The previous funding was $1.4 million, and it was our understanding they would be able to get the work done with that amount of money. We also believed, and quite frankly I don't know the status of this, that there would be some carryover money from previous years in that fund. Our budget has proposed the $1 million, which we had hoped would keep them at about the same level they were the year before.

Mr. AUCOIN. Do you know there is carryover money?

Mr. SWIMMER. I do not know that.

Mr. AUCOIN. But you submitted the budget on the basis of that?

Mr. SWIMMER. At the time, we had a belief there would be, but I am not sure at this point there is.

Mr. AUCOIN. Wasn't the $1.4 million based on about an eight-month year because of various and sundry delays, not a 12-month year?

Mr. SWIMMER. I am not aware of that issue.

Mr. AUCOIN. Well, I would have to tell you that it was, and it kind of disturbs me that budget submissions are being given to this committee without any knowledge of that backlog. Wasn't there something like $300,000 of contract support funds that were also available on top of the $1.4 million for this purpose so that in terms of an actual level of spending, there was about $1.7 million?

Mr. **Stangl**. I would address that. The intent, I believe, implied in the congressional report for 1986 was that this would be a new program, and it would be eligible for consideration under the line item called "contract support for new contracts".

And at this point in time, they will be considered within that total to get a share of whatever is available. It may not be——

Mr. **AuCoin**. It was around $300,000, wasn't it?

Mr. **Stangl**. $300,000. Their proposal was in that range for 1986, yes. Whether they will get that amount or not, I can't tell you at this time.

Mr. **AuCoin**. They may not?

Mr. **Stangl**. That is correct.

Mr. **AuCoin**. If they got none of that, if they would drop from a program support level of $1.7 million to the $1 million that you have recommended.

Mr. **Swimmer**. With the contract support, they would have more than the $1 million.

Mr. **Stangl**. Yes, because that contract support would carry forward into 1987 also.

Mr. **AuCoin**. Can you tell me how the $1 million requested by the BIA will be apportioned between the Columbia River, Intertribal Fish Commission and the Northwest Indian Fisheries Commission?

Mr. **Ryan**. May I provide that for the record?

Mr. **AuCoin**. Sure.

[The information follows:]

Apportionment of United States/Canada Pacific Salmon Treaty Funds

The $1 million requested to carry out certain United States' obligations under the Pacific Salmon Treaty are proposed to be allocated as follows: Northwest Indian Fisheries Commission—$700,000 and Columbia River Intertribal Fish Commission—$300,000.

FUNDS FOR FISH SAMPLING AT BONNEVILLE DAM

Mr. **AuCoin**. Of the $1 million requested by the BIA to implement the U.S.-Canada Salmon Interception Treaty, how much does the agency plan to allocate for fish sampling at the Bonneville Dam? Do you have that information? Do you want to provide that for the record?

Mr. **Swimmer**. Yes, I think we should.

[The information follows:]

Funding for Fish Sampling at Bonneville Dam

The $1 million requested by the BIA has not been broken down by study component (Bonneville fish sampling, Oregon spawning surveys, chum salmon research, etc.). The BIA believes that the two inter-tribal fisheries commissions, working in conjunction with the states and federal agencies comprising the Pacific Salmon Commission, are in the best position to allocate the overall resource base provided for Treaty implementation through the budgets of the Departments of Commerce, State, and Interior. Because of the coordinated and joint nature of the studies proposed by the Pacific Salmon Commission, any changes in funding levels requested by the participating agencies and entities will have to be balanced off against each other. Depending upon FY 1987 funding levels received by the states, tribes and Federal agencies responsible for implementing the U.S.-Canada Treaty, the Pacific Salmon Commission would need to re-examine its funding proposal and prepare a modified plan for optimizing treaty commitments under the funding constraints imposed. Tribal programs and requirements would be factored into the revised plan.

FUNDING FOR SPAWNING SURVEYS

Mr. AuCoin. How much of that $1 million does the agency plan to allocate for spawning surveys and specific drainages in Oregon? Do you want to provide that?

Mr. Ryan. I am not sure we have that information.

Mr. AuCoin. At all?

Mr. Ryan. Well, there are other agencies that are contributing to this. The way the money would work, it would be prorated, so I suppose overall a percentage breakout—I can provide that.

[The information follows:]

Funding for Spawning Surveys and Specific Drainages in Oregon

The $1 million requested by the BIA has not been broken down by study component (Bonneville fish sampling, Oregon spawning surveys, chum salmon research, etc.). The BIA believes that the two inter-tribal fisheries commissions, working in conjunction with the states and federal agencies comprising the Pacific Salmon Commission, are in the best position to allocate the overall resource base provided for Treaty implementatioin through the budgets of the Departments of Commerce, State, and Interior. Because of the coordinated and joint nature of the studies proposed by the Pacific Salmon Commission, any changes in funding levels requested by the participating agencies and entities will have to be balanced off against each other. Depending upon FY 1987 funding levels received by the states, tribes and Federal agencies responsible for implementing the U.S.-Canada Treaty, the Pacific Salmon Commission would need to re-examine its funding proposal and prepare a modified plan for optimizing treaty commitments under the funding constraints imposed. Tribal programs and requirement would be factored into the revised plan.

CHUM SALMON RESEARCH

Mr. AuCoin. Of the $1 million, how much money does the agency plan to allocate for research regarding chum salmon in the Upper Puget Sound? Do you have that information?

Mr. Ryan. We can provide that for the record.

[The information follows:]

Funding for Research for Chum Salmon in Upper Puget Sound

The $1 million requested by the BIA has not been broken down by study component (Bonneville fish sampling, Oregon spawing surveys, chum salmon research, etc.). The BIA believes that the two inter-tribal fisheries commissions, working in conjunction with the states and federal agencies comprising the Pacific Salmon Commission, are in the best position to allocate the overall resouce base provided for Treaty implementation through the budgets of the Departments of Commerce, State, and Interior. Because of the coordinated and joint nature of the studies proposed by the Pacific Salom Commission, any changes in funding levels requested by the participating agencies and entities will have to be balanced off against each other. Depending upon FY 1987 funding levels received by the states, tribes and Federal agencies responsible for implementing the U.S.-Canada Treaty, the Pacific Salmon Commission would need to re-examine its funding proposal and prepare a modified plan for optimizing treatly commitments under the funding constraints imposed. Tribal programs and requirements would be factored into the revised plan.

FY 1986 FUNDING OF INTERTRIBAL FISH COMMISSION

Mr. AuCoin. How soon will BIA release already appropriated 1986 funds to the Intertribal Fish Commission to carry out the programs mandated under the Interception Treaty?

Mr. Swimmer. I believe it has been released except for the contract support monies, which should be soon, but the money has been released and has been sent out to the area office.

Mr. AuCoin. How much then has been released?

Mr. Stangl. It would be the $1.4 million less the reduction for Gramm-Rudman and the six-tenths of one percent across-the-board cut.

Mr. AuCoin. And then how much is yet to be released, but will be released soon?

Mr. Stangl. That would be the contract support, and I can't give you that number until we know what is in the total universe against what we have available.

Mr. AuCoin. What does soon mean?

Mr. Stangl. Within the next two or three weeks.

Mr. AuCoin. I asked, because I was listening with fascination to the study took a year-and-a-half to wind its way through the department.

Mr. Yates. It hasn't winded yet.

Mr. AuCoin. It is still winding. Sooner than a year-and-a-half or more. We are talking about a couple weeks?

Mr. Swimmer. Two or three weeks. I will say three weeks and hope we can do it before then.

KLAMATH TRIBE

Mr. AuCoin. Let me ask you a couple questions about the Klamath Tribe, Mr. Swimmer, and these are the last questions, Mr. Chairman, that I have.

Even though, as you may know, the Klamath lost their Federal recognition under the 1954 Act, the courts have upheld the validity of hunting, fishing and gathering rights, and I am correct in that, I am sure you would agree that that is the case.

I am looking at an August 11th memorandum from the BIA Assistant Area Director for Program Services in Portland to the Director of the Office of Trust Responsibilities here in Washington. This memorandum indicates that, and I am quoting, "It is our evaluation that the estimated needs for the fiscal year 1986 program are not less than $345,000."

Why was this information not passed on to Congress, which provided only $145,000 in the Continuing Resolution based on the Bureau's need estimate, when this information was in the Bureau's possession? This was August 11th of last year.

Mr. Swimmer. I don't know. The request, as I understand it, was for $260,000. I am not aware what the impact of that letter was.

Mr. AuCoin. Let me just tell you how this all came about. We were working on the Continuing Resolution, we asked the Bureau, there was some dispute about what was needed, we asked the Bureau what its need assessment was for this purpose. This document was in your files, in your possession, had been since August 11th. It said that the estimated needs for the 1986 program are not less than $345,000, but your agency provided to us, working on the Continuing Resolution a need assessment of only $145,000, as we were working on the Continuing Resolution, well beyond August 11 of last year. You have no explanation for that?

Mr. SWIMMER. I do not. I don't know if——

Mr. STANGL. If my memory serves me right, we asked for $260,000, not asked, we actually reported to you that would be the apparent need.

Mr. AUCOIN. I don't remember that, because we asked for a Bureau assessment, and it was the Bureau's need assessment that we put into the CR. So if you would have asked for that, you would have gotten it.

Mr. STANGL. We can check the capability requests we have from last year to see what it was, to make sure. There may have been some negotiations in conference——

Mr. AUCOIN. That is right, I am reminded by staff the budget was at $260,000 the Senate cut it to $145,000 but the Bureau told the Senate the cut was okay.

Mr. STANGL. I can't answer that right here. We can go back and find the statements and check that.

Mr. AUCOIN. Does the Bureau now recognize an additional need for the tribe to carry out its management activities given what you originally requested and the capitulation which you went through at the time of the CR to the Senate?

Mr. SWIMMER. Our assessment of the needs was at $260,000. I don't know, without getting into more detail and furnishing you some information on it, how we can justify more than that.

Mr. AUCOIN. You are only getting $145,000 though, and your need assessment is $260,000. Are you going to request a supplemental? Why haven't you requested a supplemental?

Mr. STANGL. We are going to be provided money from water resources, as well, associated with this.

Mr. AUCOIN. Is that a reprogramming request?

Mr. STANGL. We would be using it for the same purpose for which it was appropriated; it is just allocating it to this project instead of other projects.

Mr. AUCOIN. Will that amount to $115,000 to reach the need assessment?

Mr. SWIMMER. $105,000 in fiscal year 1986.

Mr. AUCOIN. So you are still about $10,000 short of the need assessment. Can you provide the difference within appropriations you already have, the remaining $10,000?

Mr. SWIMMER. I am sure we could.

Mr. AUCOIN. Will you?

Mr. SWIMMER. From another account. I don't know that until—I can't say that I would until I am satisfied that that is what is needed. We have three different figures here.

Mr. AUCOIN. It is your need assessment.

Mr. SWIMMER. I understand that, but for some reason the Senate apparently felt we only needed $145,000 and we apparently suggested that figure was okay too, so there would be no point for me to find out from our trust shop what is needed out there. We will see what we can do within the limits of the budget we have to fulfill that need.

Mr. AuCoin. You just told me, though, $260,000 is the need estimate.

Mr. Swimmer. That is right.

Mr. AuCoin. And you have taken a step to bring you within $10,000 of that. My question to you is: Can't you within appropriated funds reach the other $10,000?

Mr. Swimmer. Well, we can consider doing that, and I don't want to appear argumentative. It is just that in doing so some other need has to be reduced $10,000. We will determine where the priorities are and certainly consider the request and see if we can comply.

Mr. AuCoin. Mr. Swimmer, the same memorandum I cited indicates, again quoting, "Funding needs would reduce to approximately $300,000 in fiscal year 1987 because DOT completion of special work on water needs quantification."

That is the end of the quote, and bring the need to $300,000. The tribe tells me that $311,000 would be an appropriate amount. How much is in the budget request for fiscal year 1987?

Mr. Stangl. $145,000 is requested for the Klamath Conservation program.

Mr. AuCoin. You took the 1986 level as a base and extended it into fiscal year 1987?

Mr. Swimmer. Yes.

Mr. AuCoin. Is anyone reading the memos out there in the field?

Mr. Yates. Our staff is.

Mr. AuCoin. Anyone in the agency?

Mr. Swimmer. I think they are reading those memos.

Mr. Stangl. Of course, they make these recommendations, they are viewed at the Central Office level and Central Office makes an independent recommendation that may differ from what the area may have requested.

Mr. AuCoin. What did BIA request of the department for 1987?

Mr. Stangl. For 1987?

Mr. AuCoin. Yes.

Mr. Stangl. At the time that we requested funds from the department, this program had not been included in the 1986 request, so I don't have the number for that. It did not exist at that time.

Mr. AuCoin. That is all the questions I have, Mr. Chairman.

Mr. Yates. In light of your questions, I remembered a comparable kind of questioning we had in 1985. That was before you were with the department as Assistant Secretary. I think perhaps we ought to find out what BIA is doing about it.

FORESTRY MANAGEMENT

Here is what we said. I quoted from the New Indian Wars, which was an article that appeared in the Denver newspaper, and my quote was this: "Last spring, after 12 years of legal maneuvering, the Quinault won their first victory. The Supreme Court relieved them from the doctrine of sovereign immunity and gave them the right to sue the Federal Government for mismanagement of timber land. The case can now go to trial."

Does anyone know what happened to the case?

Mr. **Ryan**. The allottees brought suit against the Bureau of Indian Affairs for mismanagement of the timber allotment, and the case went through the District Court, and I believe right now there has been a partial judgment that the United States did breach its fiduciary responsibility in management of that allotment.

However, it is still in litigation. You asked what happened to it. It is still in litigation.

Mr. **Yates**. They say, "The Quinault are not alone. Of about 13 million of forest Indian lands in the United States, about 5.8 will support commercial logging. In 1911, Congress charged the BIA with responsibility for managing the Indian forests to obtain the greatest revenue for the Indians consistent with proper protection and improvement of the forests. The BIA spent just about $1.57 an acre for forestry management, far below the $2.34 an acre by the U.S. Forest Service and the $7.39 an acre by the Bureau of Land Management and the $5.47 per acre by private land management."

How much are you spending?

Mr. **Ryan**. I would have to provide that for the record.

[The information follows:]

BIA Expenditure Per Acre for Forest Management

In Fiscal Year 1985, the BIA spent about $1.61 per acre (based on a total commercial forest land base of 5,935,700 acres) for forest management and development activities, consisting of forestation and timber stand improvement.

Mr. **Yates**. Does anyone know?

Mr. **Ryan**. I can get that information for the record.

Mr. **Yates**. You don't know offhand? What is your guess? Have you ever looked at it?

Mr. **Ryan**. Yes, I have, but I can't recall what the number is.

Mr. **Yates**. Is it as much as $5.47 an acre?

Mr. **Ryan**. I am sorry, I don't want to speculate.

Mr. **AuCoin**. Has it increased?

Mr. **Yates**. He doesn't want to speculate.

Ms. Crosby says, "Why the number?"

Mr. Yates says, "Why don't you take care of the timber lands, how much are you asking for in this budget?

"Ms. Crosby. Mr. Chairman, the numbers you are relating relate to forest expenses, not timber sales. They are talking about reforestation and timber stand improvement.

"Mr. Yates. That is what we are talking about too, isn't it, Ms. Crosby?

"Yes, it is a limited part of the forestry.

"Mr. Yates. I know that. But we are talking about management of the forests, aren't we?

"Ms. Crosby. Part of it.

"Mr. Yates. We are talking about, Ms. Crosby, development, reforestation. We are talking about good husbandry of the forest, aren't we?

"Mr. Mills. That is right.

"Mr. Yates. Okay. Why don't we do what the others do, why don't we put as much into the Indian—in care of the Indian forest as the Forest Service does?"

"Mr. Mills. You know, Mr. Chairman, this committee I think has been very good.

"Mr. Yates. We have been trying to push you into reforestation programs, haven't we?

"Mr. Mills. You sure have.

"Mr. Yates. We have given you the money for it, haven't we?

"Mr. Mills. Yes, sir."

Now, what is happening to reforestation? Do you have any money in your budget?

Mr. Ryan. Yes. We have $2.4 million——

Mr. Yates. Is that the same amount as last year?

Mr. Ryan. No, it is less.

Mr. AuCoin. How much less? About 45 percent less?

Mr. Swimmer. We are back at the 1985 level is what we had proposed.

Mr. Yates. I thought we established a ten-year program with you. Did we not for reforestation?

Mr. Swimmer. That is right.

Mr. Yates. In order to get rid of this huge backlog?

Mr. Swimmer. And we managed to get about half of it.

Mr. Yates. You managed to come up to this year, and you don't want to have the reforestation program, do you?

Mr. Swimmer. I think so. I think it is very important, and I think it is one of the things the Bureau is developing its expertise at and doing fairly well within the budget constraints we have. We have appropriated, or asked for about $5.7 million, which we hope would keep us on track.

Mr. Yates. Are you hoping that we put it in to keep you on track? Does anybody want to hope?

Mr. Swimmer. I would hope that we keep it in.

Mr. Yates. Good for you.

Mr. Mills said, "Yes, sir", and Mr. Yates said, "This comes as kind of a shock to me. I thought we were providing you with all the money you needed for good forestation and protection of Indian resources." And if this paragraph is true, as Shirley indicates it is—are you still indicating, Shirley?

Ms. Crosby. Yes, sir.

Mr. Yates. I think perhaps we have been wrong or you have been wrong in not telling us we ought to put more money in. Mr. Mills goes on, "I am not saying we are doing an inadequate job. But we are doing a good job with the current funding right now. I would have no problem increasing that or coming forward with it as soon as we see it is necessary. Our total program could handle it.

"Mr. Smith. Mr. Chairman, yes.

"Yes", said Mr. Yates. "I would say in the past it was inadequate until you added the $5 million in the budget in 1977."

Mr. AuCoin. Whatever happened to Mr. Smith?

Mr. Yates. I don't know. What happened to Mr. Smith? Ken Smith. Well, he has gone back to private practice.

"Now we believe we are going to be able to deal with the backlog, but it is going to take longer than we anticipated because of inflation."

"Mr. Yates. I thought inflation rates were down.

"Mr. Smith. They are down. At least they are not 13 percent, but they are down to about three"——

Mr. Yates says, "All right. This article says BIA spends $1.57 an acre for forest land."

Mr. Ryan, would you be surprised if you were spending much more than that?

Mr. RYAN. I am not exactly sure. I think there is a difference between what you are reading and the case today. Under tribe agencies, these timber tribes can take more of the resources and put it into forestry development, and that wasn't the case then.

Mr. YATES. 1985. 1985? OK, the committee put it in newly——

Mr. AUCOIN. Let me interrupt for a minute. If they did that, they would have to take it out of other programs, many of which are social programs they have been using for laudable purposes, is that not correct?

Mr. RYAN. They would be able to budget for the priorities.

Mr. AUCOIN. What you have done is cut the forestry program designed to get at these reforestation things, lumped it into a program which is multipurpose, and then said to the timber tribes, if you want to supplement your programs so you can get at that forest problem that we created for you, you can do so, but somebody is going to go without a job or without some other service which they need, which they have been able to get some help for through this program in the past, because a dollar put into forestry is going to come out of some other function, some other program.

Mr. STANGL. That is assuming no increase in tribal operations. We increased the priority amount by $4 million overall.

Mr. YATES. Will you yield for a second?

Mr. AUCOIN. Sure.

Mr. YATES. Let me ask the same question I asked two years ago when I said "Go ahead, Shirley."

And Shirley answers: "Mr. Chairman, I am not sure. Part of the reason for the reduction in per-acre cost is because of the reduction in timber sales, and the fees the tribes have been putting into the forestry program."

Mr. Yates said, "Yes, but the comparison is between what is available for these timber lands and what the others have put into theirs. That is still pertinent, is it not?"

Shirley says, "It is."

Mr. Yates repeats, "It is. How much money do you need to take care of the timber lands?"

And Shirley didn't reply to that.

Mr. Mills replied. "At the present time, Mr. Chairman, as you mentioned, the market has been a little low. I think we can get by at the present time." OMB must have been in the room that day. It may be during a pause here, "Until things get better, why we can get by sufficiently. But I think if things continue to pick up in the next year or so, I will make it a high priority and will be knocking on Mr. Smith's door."

Is somebody knocking on Mr. Swimmer's door to put more money in for this?

Mr. RYAN. I don't think anybody has had to knock on his door. I think he is very sensitive to this.

Mr. **Yates**. Mr. Yates says, "How can we wait to take care of this land, how can you wait for timber management, the forests are there, you cannot rely on the market, you aren't going to let the forests go to pot for lack of money."

"Mr. Mills answers, "No, no, sir.

"Mr. Yates. This is what you are saying, until the market improves, there isn't much we can do."

So the question I asked is, how much money do you need to take care of the Indian forests? Is there enough to take care of the Indian forests? That is what the lawsuit is about the Quinaults are bringing, isn't it? You are not providing the Indians with enough funds to take care of their forests, are you? Aren't you going to be subject to another lawsuit?

Mr. **Ryan**. I am not so sure that was a funding suit as much as it was management of an issue.

Mr. **Yates**. Isn't the question of funding management? You can't manage without funds, can you?

Mr. **Ryan**. No, sir.

MINERALS & MINIING ROYALTIES

Mr. **Yates**. That brings us back to MMS, doesn't it?

Mr. **Swimmer**. I am not sure.

Mr. **Yates**. I am sure you see the connection, because I see it. My goodness, I keep thinking, what has delayed the lawsuit? My goodness. Because everybody concedes that the Indian people aren't getting as much money as they should be getting.

Mr. **Swimmer**. I am not sure everybody concedes that fact.

Mr. **Yates**. I read you what Mr. Bettenberg said yesterday, the Linowes Commission said it, our investigators said it. The accountants say it.

Mr. **Swimmer**. We have evidence that we have problems in the collection of royalties.

Mr. **Yates**. Oh, man, have you got problems.

Mr. **Swimmer**. And we are certainly addressing those problems. I think MMS has come a long way in doing that, and have a long way to go.

Mr. **Yates**. We asked Shirley about timber for a long period of time. Remember that, Shirley?

Ms. **Crosby**. Yes, Mr. Chairman.

Mr. **Yates**. Do we want to go into that again, or would you rather not? You have a choice, Shirley.

Ms. **Crosby**. Your choice, Mr. Chairman.

Mr. **Yates**. Mr. Yates goes on to oil and gas leasing, and let's you and I do the same thing, Mr. Swimmer.

"Does anybody at BIA read the, "New Indian Wars"? Anybody here heard of the Reading and Bates Oil Company?" Anybody here know about the Reading and Bates—you know, don't you?

Mr. **Swimmer**. Yes.

Mr. **Yates**. Mr. Mills said, "It doesn't sound familiar to me, sir.

"Mr. Yates. Here is what it says. The Navajo landowners share concerns with native Americans across the United States. Some don't want development at all, they fear the impact of coal trains and strip mines. Others just want more money. They feel they are being cheated. On one point they are certain, they are not being treated with the utmost good faith.

"Mr. Mills, the four leases were known as Red Moon 29 and 32. Does that sound a bell to you?"

Mr. Mills says, "No, sir, it doesn't."

And Mr. Yates reads, "They were on land owned by the Cheyenne and Arapaho tribes above the Anadarko Basin."

You know about the Anadarko Basin, don't you?

Mr. SWIMMER. Yes.

Mr. YATES. "A rich formation holding oil and natural gas in western Oklahoma, signed on May 10, 1967 with the Wood Petroleum Company for a term of five years. Do you know about Wood? Mr. Mills says, "No, sir." (Reading) The oil company moves slowly. By spring of 1981, not a well had been drilled on the tribal property, and leases well due to expire.

A second petroleum company, however, had leased two adjacent parcels, drilled a well, and identified 11 potential deposits of natural gas to a depth of 16,800 feet. This firm, the Reading and Bates Oil Company, wanted to tie up the four leases so that no savvy rival would be able to drill nearby and tap their find.

So Reading and Bates asked the tribes to combine the Red Moon leases with producing leases, a procedure known as communization, and the tribes were willing but wanted to renegotiate the terms of the leases. Reading and Bates refused.

All this leads me to the question. Is there any activity on the part of BIA to find out whether or not the leases are paying, either oil and gas or coal, are paying the Indians up there the kind of fair return they should be paying to the Indians?

Mr. SWIMMER. There is continuing activity in that area to see that that happens, and a lot of the work MMS has done to upgrade and provide to us the sales data they get from the energy companies verifies that fact, that we are, in fact, getting a fair return on those energy resources. The auditing of the energy resource at the—on the lease site has actually been by Bureau of Land Management, and recently we have worked with some tribes, the Navajo is one, that is doing its own audits, working—they have worked through the BLM and MMS to get audit capability where they can do audits of their own well systems. It is a slow process, and it is one that has taken too long to get done, and I think it is something that receives constant attention. It has been made a very high level priority with myself and Mr. Ryan.

Mr. RYAN. The report you provided Mr. Swimmer, at the beginning, I think that report contains information and indicates that we have been having oil and gas leases at a much higher royalty than 20 percent, as opposed to the previous 16 and two-thirds percent in past instances, and also some tribal leases have been renegotiated up to 25 percent. Part of it is that whatever the market price is at the time, you negotiate a lease and whatever the market price is affects the value of the lease, but on the whole the royalty negotiating has been much higher.

Mr. YATES. That takes us back to the Arapahoe and Shoshone again. Mr. Swimmer, I must confess I really don't understand, unless you were double-crossed, why that suit was dismissed, because your letter said this, "I have concluded it is in the best interest of all parties to eliminate the confusion by dismissing the cancellation of additional lawsuits without prejudice. The action gives everyone the opportunity to work from a clean slate and facilitates continuation of the settlement negotiations."

Now, that letter was written on 13 January 1986, and on February 6, 1986, about three weeks later, attorneys for the oil company wrote a letter to the lawyers for the Indians saying that "We are dismissing"—"We are no longer interested in making a settlement with you."

Now, your letter indicates the reason you were dismissing was because settlement would be facilitated. Actually what happened was that as soon as the case was dismissed, the oil companies dropped any settlement. Now, did you have anybody from the oil companies tell you, did anybody from the oil companies tell you if the cases were dismissed that that would facilitate settlement?

Mr. SWIMMER. No.

Mr. YATES. Why dismiss the case until it is settled?

Mr. SWIMMER. It was the opinion of the Solicitor, in consultation with the people who had been in the Department during this period of time, that if we were going to have a successful settlement and/or litigation that it was best to, that the chances of us prejudicing the case against the Indian clients was somewhat greater than what we wanted, and that it was going to be very difficult.

Mr. YATES. How could that happen? There is a reference to prejudicial statements made by BIA officials. That is before you came to the department. Here is the resolution by the National Congress of American Indians. The Department of the Interior, through its officers, harmed the tribe's cancellation action by making a prejudicial public statement. What is the nature of those? What would the statements have been?

Mr. SWIMMER. It is my understanding that prior to my time, possibly three years or so ago, statements were made by officials of the department that indicated the oil company was taking advantage of the tribe, but that there was no evidence to that fact. It would have been very difficult if an internal investigation was not done, to go to court with that kind of a statement. You simply could not go in and be impartial. In other words, an administrative appeal by someone in the department would be defective if they made up their mind before they saw the evidence.

When I came into the department, I was perhaps the only one who had not seen the evidence. I don't have any strong belief one way or the other. I am obviously concerned that the Indian tribes get what is due them, but I am not——

Mr. YATES. They have to start all over again. Four years have gone by. Four years are lost.

Mr. SWIMMER. But the litigation that we were engaged in could easily have taken longer, had it proceeded along those lines of administrative appeals and the judicial issue, than it would if we were able to reach settlement and/or trial, a new lawsuit.

Mr. YATES. Don't they have to file a new cancellation and start a new lawsuit now?

Mr. SWIMMER. They would.

Mr. YATES. So they are four years behind. What happens to higher royalties that might have accrued during the four years? They will not be able to receive those unless that is included in the terms of possible settlement, right?

Mr. SWIMMER. That is right.

Mr. YATES. But as of now, they are back to square one, is that not true?

Mr. SWIMMER. They are put in a position of no harm. The energy companies are obviously not taking out the energy resources, nor is it paying for them, but the tribe has the opportunity now to enter into negotiations or sue for the cancellation, but it might be there are other options the tribe can take that would increase their recovery.

Mr. YATES. Suppose the administrative hearing had not been dismissed, wouldn't the tribes be in a better position to negotiate a settlement if the oil companies have that hanging over their heads? I would have thought so. Of course, it would have been so during the time when I practiced law. Wouldn't you think so, in retrospect, now?

Mr. SWIMMER. I don't believe so. I really think at the time we discussed this, and I discussed it at length with the Solicitor, the action we were taking would protect the interest of the tribes, and I have no reason to believe it is otherwise at this time.

Mr. YATES. All right.

COMPLAINTS AGAINST BIA BEHAVIOR—NAVAJO-HOPISETTLEMENT

Hazel, can I invite your attention to a letter Mr. Swimmer received, dated April 10th. Do you have it, by any chance, Hazel? Shall I read it to you?

Ms. ELBERT. Yes.

Mr. YATES. "Dear Mr. Swimmer. It is written at the urging of many of the Navajo families awaiting relocation from the Hopi Partitioned Land. These families reside above Rocky Ridge, to the South of Rocky Ridge Boarding School and the Trading Post. The described area is identified for exchange under H.R. 4281, the Udall-McCain bill now pending in the House. At present the BIA is engaged in fencing and well construction on these lands." Right?

"At the request of the families, the tribal attorney met with them on March 28, 1986. At that time complaints were made that BIA personnel were performing surveys, constructing gates, and engaging in fencing activiites, were tearing up the road and the forage in the vicinity of relocating homes.

"There are also, hopefully, rangers, as well as BIA law enforcement officers, who are present and have been talking to residents, especially the elderly who cannot speak English."

Do you know about that?

Ms. ELBERT. No.

Mr. YATES. Would you make yourself aware of it or will Mr. Swimmer?

Mr. SWIMMER. We will, and I am not sure that it is true.

Mr. YATES. I am not aware it is true, either, but I am bringing it to your attention.

Mr. SWIMMER. And we have checked that out and can't find evidence of it.

Mr. YATES. This is what they also say. A common complaint is BIA vehicles come driving into the midst of and in front of relocated residences at high rates of speed.

There is anxiety someone may be injured as a result.

Also, the Bureau is performing its survey. In performing its survey and fencing construction, is not taking into consideration any of the Navajo sacred places which are protected under the statutes.

It is my request that you, Mr. Swimmer, as a Federal officer in charge of the operations for the BIA, order an immediate halt of these activities by BIA and Hopi personnel.

There is no law and order on the Hopi Partitioned Lands at present, because neither the BIA nor the Hopi tribe of police are there to assist when a law and order issue arises.

As you are aware, the Navajo Nation does not have law and order jurisdiction on Hopi Partitioned Lands.

The current presence of Hopi and BIA law enforcement officers in the context of this on-going harassment is highly questionable.

The complaints being made are more than those of a general nature.

To cite two particular incidents: one, "In March of 1986, two unidentified BIA employees or Hopi rangers came to Mary Begay's residence and taunted her using their own version of sign language to inform her she should pack all her belongings on her back and hike down the road to relocate. This is an elderly Navajo woman who spoke no English at all."

Has that been checked?

Mr. SWIMMER. I have checked that with our area office, and I can't verify that.

Mr. YATES. Has anybody talked to Mary Begay?

Mr. SWIMMER. I am not aware they have.

Mr. YATES. Will somebody talk to Mary Begay?

Mr. SWIMMER. Sure.

Mr. YATES. Two, "Another elderly Navajo couple were taunted by repeated requests to loan them a spare tire from a broken down car which had no tire." I don't understand that one.

Mr. Swimmer, you and I cannot comprehend the anxiety and frustration, individuals without a home land since the date of partition of the joint use area.

By their own words, they presently live under duress and fear. "The Navajo nation strongly objects to the shameful treatment of these individuals, especially at this point in time, approximately three months before the expiration of the relocation deadline by persons subject to your control."

Do you have this letter?

Mr. SWIMMER. Yes, I do.

REDUCTION OF FUNDS—ALASKA

Mr. YATES. Have we finished with Alaska? I think we have.

You are going to reply to the Governor's letter for the record, right?

Mr. **Swimmer**. Yes.

NEW SCHOOL CONSTRUCTION

Mr. **Yates**. The bill language proposes a moratorium on new school starts. Is that true?

Mr. **Swimmer**. Yes.

Mr. **Yates**. Why do you want that?

Mr. **Swimmer**. Budget consideration. We did not believe we were prepared to start new schools given budget and regulations considerations.

We had some new schools that had been proposed, and in looking at the expense of it and the program effort that was going into it, as I described yesterday, we were not convinced that it was the thing to do to go ahead with new school construction at this time.

Mr. **Yates**. That is Saint Francis and Turtle Mountain.

Mr. **Swimmer**. Rocky Boy and Two Eagle, I think.

Mr. **Yates**. What does the moratorium apply to?

Mr. **Swimmer**. Okay, we are on a different——

Mr. **Yates**. Would you feel bad if we didn't accept your language?

Mr. **Swimmer**. No.

Mr. **Yates**. I didn't hear that.

Mr. **Swimmer**. No. And I think I was addressing the wrong subject, Mr. Chairman.

It was new school starts by tribes, and there are a couple of those we have been working on.

I think we have got it worked out and a couple of other settlements we have discussed with the tribes.

GRAMM-RUDMAN-HOLLINGS REDUCTIONS

Mr. **Yates**. I don't think we will be terribly insulted if you don't.

Gramm-Rudman reductions totalled $38 million plus. Are there any programs or areas where the impact of these reductions has created particular problems?

Mr. **Swimmer**. Yes. I guess to some extent all of them are, because it was an across-the-board cut and an unprogrammed cut.

So, we do have a problem when every line item has to be reduced, and some may affect direct services more than others.

Obviously, some affect administrative services and some affect people directly in all the programs we operate. So, yes, everybody suffers equally, I suppose.

Mr. **Yates**. Why would we in this committee receive a call to the effect that this tribe was cut by 13 percent rather than 4.3 percent that the first Gramm-Rudman cut was supposed to take?

They were supposed to be cut by 4.3 percent.

Mr. **Swimmer**. There are some reasons for that.

FISHERIES REDUCTIONS

Mr. **Yates**. This is fisheries.

Mr. **Swimmer**. The fisheries program.

Mr. **Yates**. Yes. Thirteen percent. When it should have been cut by 4.3.

Do you want to check it?

Mr. **Swimmer**. Yes. We can check it.

Mr. **Yates**. Do you want to give me specific instances where you are hurt badly by the cut or maybe you want them corrected?

How badly are you hurt? Are you hurt so badly they ought to be corrected?

Mr. **Swimmer**. We are going to be able to continue all of our operations, but everything has to be done at a reduced level.

Mr. **Yates**. Are you going to be limping along or running along?

Mr. **Swimmer**. In some of the cases, we will be limping along.

Mr. **Yates**. Is that report you told us about so far that has taken a year and a half going to be limping along or speeding along?

Mr. **Swimmer**. That is not a part of it.

I think, primarily, the report is complete, waiting for review of the appropriate parties and comment.

Mr. **Yates**. Who are the appropriate parties?

Mr. **Swimmer**. The Department of the Interior and the people of Alaska would have to review it.

Mr. **Yates**. How long will that take?

Mr. **Swimmer**. I can't speak for the rest of the Department. Our particular agency, it can be done in a matter of just a few weeks.

The other issues involving the Gramm-Rudman, those that affect individuals, in particular, the kinds of things like general assistance, tribal work experience, and direct employment assistance, Indian child welfare—all of those, I think, cause concern, because they are a more direct impact on families.

Mr. **Yates**. Right. They should have been exempted in the same way as the safety net program under Gramm-Rudman were, shouldn't they have been?

Mr. **Swimmer**. Some of them are awfully similar, especially——

Mr. **Yates**. Certainly the welfare programs are, are they not?

Mr. **Swimmer**. They are similar. They do provide additional benefits to what the general welfare programs provide.

GRAMM-RUDMAN-HOLLINGS EXEMPTIONS

Mr. **Yates**. How would you react to an attempt by the committee to exempt the following programs?

One, the general assistance funds? Shouldn't those be exempted as they were under the Gramm-Rudman bill?

Mr. **Swimmer**. Well, I think there was reason for not exempting them at the time it was done.

Mr. **Yates**. I think it was just overlooked.

Mr. **Swimmer**. Do you?

Mr. **Yates**. I do. Indian child welfare funds, why in the world would those who drafted Gramm-Rudman and exempting children's nutritions programs, welfare programs, not also include the same for Indian children?

Mr. **Swimmer**. The Indian child welfare program essentially—yes, the child welfare assistance provides the kind of assistance that is done mostly at the State level by state governments and not particularly affected by Gramm-Rudman.

The general assistance; that is a category all to itself. It doesn't replace a state program; it supplements what is there.

Mr. YATES. Do you think Indian school equalization programs should be exempted?

Mr. SWIMMER. There again, I think the intent of Gramm-Rudman—I don't mean to speak for Congress—but the intent apparently was to have an across-the-board cut with as few exemptions as possible.

When we talk about education programs, I don't think those were exempted, generally. So our's would probably face the same fate.

Mr. YATES. What about funds relating to protection of Indian trust assets? Would you think Congress would want you to cut back on your trust responsibilities, especialy Indian trust assets?

Mr. SWIMMER. I wouldn't think Congress would want us to, but I think there are other—again, the same discussion, they were——

Mr. YATES. Can you cut back? If you have Indian trust assets that you have to administer, how can you jeopardize that trusteeship by not having adequate funds to deal with it because of a Gramm-Rudman cut?

It doesn't make sense, does it?

Mr. SWIMMER. No, and it is the level we are talking about, and we discussed the forestry program earlier. And, we said after a ten-year program we should be able to get our inventory and backlog done. Whether it is done in one year or ten years is what we are discussing in terms of protection of the trusts.

Mr. YATES. Suppose the committee in its wisdom were to exempt those programs or try to obtain an exemption of those programs from the strictures of Gramm-Rudman. Would you find that objectionable?

Mr. SWIMMER. No.

Mr. STANGL. Mr. Chairman, if I might interject here, for an exemption like that to work, it would have to be a total exemption rather than just an exemption within the account.

The way Gramm-Rudman now operates, the cut is assigned to an appropriations level and then carries down to a lower level.

These are in an operations account. If we were to exempt internally within that account, all the other programs within that account would have to be cut at a much greater rate than, for instance, in 1986 by 4.3 percent.

If you applied this kind of exemption, it would mean there would be an eight or ten percent cut.

Mr. YATES. That is the way it works, isn't it?

Mr. STANGL. Potentially, you could destroy those other programs.

Mr. SWIMMER. Which is an issue that has to be addressed.

Mr. YATES. Even if you destroy the other programs, the sanctity of a trust asset is such it shouldn't bear a cut, should it?

You can't. I mean, you are a trustee for what is Indian property.

Mr. SWIMMER. But the administration of trust assets can be done with the funds we have available.

The enhancement of the trust assets might not. It might take a longer time to do that, as we discussed with forestry.

I think what Tom is saying, if we go in and exempt a particular line item, it comes out of some other line item.

If the tribes don't have an option about that, they could very well say the child welfare or GA isn't any more important than one of the other categories; it would have to be reduced in order to provide for the exemption. But I think——

Mr. YATES. Let me ask the budget officer.

Suppose you were to create a new account. Would that take care of it?

Mr. STANGL. Yes, if it were separated into a given account and the account itself is exempt.

Mr. YATES. And the other program——

Mr. STANGL. Or if you exempt the entire account.

Mr. YATES. The other programs would not be cut, then?

Mr. STANGL. I think there have been proposals suggesting the programs should be at least partially cut, similar to the way Indian Health Service has been.

SCHOOL ACCREDITATION

Mr. YATES. Are you on target to meet your goal of 100 percent accreditation by the end of the coming school year?

Mr. SWIMMER. We are on target to meet the goal. The goal is there and we are on target.

Now, whether or not we are——

Mr. YATES. Henri, are you above last year's percent?

Ms. WHITEMAN. Yes, we are, Mr. Chairman.

Mr. YATES. How many years before you get up to 100 percent?

Ms. WHITEMAN. I would hope total accreditation would occur by the end of the 1986-1987 academic year.

Mr. YATES. Can you do that with the strictures on the funding?

Ms. WHITEMAN. In terms of funding, that will not affect the basic programs we will provide to schools through the Indian school equalization program.

We are working to encourage accreditation. We hope to put some emphasis upon certification of teachers in bringing schools into compliance to insure that they meet our minimum academic standards.

We will be having to give tribal contract schools a little bit more of a grace period in terms of bringing them into compliance.

We will have two years to do that, but I am glad to report we have improved 5 percent over last year's, and we will continue to work to see that our schools are accredited.

Mr. YATES. How can this committee help you? Can we help you in any way get up to your 100 percent? If funding isn't a factor, I don't know that we can. Is that right? If I understand you correctly, you said funding is not a factor.

Ms. WHITEMAN. That is right.

Mr. YATES. Than there is nothing for this committee to do to help you, correct?

Ms. WHITEMAN. Except continue to give the kind of support you have given us in the past.

Mr. YATES. The kind of support we have given you in the past is funding support.

Ms. WHITEMAN. The same level of funding.

Mr. YATES. How much more will that require? Does that require additional funds than those you have asked for? We will expect to hear 100 percent.

ALAMO NAVAJO SCHOOL

What is the status of the Alamo School construction?

Ms. **Whiteman**. The Alamo School construction, as I understand it, without purporting again to speak for my counterparts in the Office of Construction Management, is behind schedule.

But Mr. Chairman, I cannot speak to construction itself.

Mr. **Yates**. Who knows that, Mr. Latta?

Ms. **Whiteman**. Yes.

Mr. **Yates**. Is he here? Is anybody associated with Mr. Latta here?

What is the status of the school?

Mr. **Skye**. We will provide that for the record.

Mr. **Yates**. It is as though you weren't here.

[The information follows:]

The Alamo Navajo School will be completed in July. The final inspection date is July 30, 1986. All the academic facilities and staff housing will be ready for occupancy by the time classes are scheduled to begin at the end of August.

Mr. **Yates**. We have a few letters from people concerned about closing the dormitory.

Are you concerned about that? Anybody concerned about closing it?

Ms. **Whiteman**. As I understand, funds were appropriated for construction of the Alamo Navajo School.

Mr. **Yates**. What happens to the kids who won't go to Alamo? What happens to the kids who decide they won't go to Alamo?

Ms. **Whiteman**. If the parents of the children so elect, the children may go to public school. There is that option available.

If there are some students that choose not to attend the Alamo Navajo School, and instead choose to go to an off-reservation boarding school or another school in the vicinity, that option would certainly be considered and the parents——

Mr. **Yates**. According to the letter from Magdalena Municipal Schools, signed by Dr. Marilyn Gall, Ph.D., she says the students will be riding a school bus over two hours per day if the dorm closes.

Have you talked to Dr. Gall?

Ms. **Whiteman**. No.

Mr. **Yates**. Does anybody want to talk to Dr. Gall?

Ms. **Whiteman**. I will talk to her.

Mr. **Yates**. I misunderstood you.

Okay. This letter from Mr. Edwin L. Yazzie objecting to the closing may go into the record at this point.

[The information follows:]

Box 496
Magdalena, New Mexico 87825
19 March 1986

Honorable Sidney Yates
2234 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Yates:

I have lived off and on in Magdalena, New Mexico for over twenty-seven years. I am of the Laguna and Navajo tribes. During a portion of my residence in Magdalena, I served as a Community Development Specialist at the Alamo Navajo reservation. Alamo is about forty-five miles northwest of the village of Magdalena.

I have many friends at Alamo and having worked there I feel that I am knowledgeable about the conditions which prevail there. Among one of my experiences at Alamo, I have found that in order for the community to advance socioeconomically, its future is in their youth. They must be encouraged and and provided school experiences by integrating them with students of other ethnic backgrounds. Thus far this has been done through housing the students at the bordertown dormitory in Magdalena. From this dormitory, the students attend the public schools in Magdalena (elementary, jr. and sr. high schools). As a result of this setting the following benefits are gained by the students:

1. Students are provided the opportunities to attend classes with other races.
2. Tutoring and recreation activities have offered each student the necessary academic and recreation skills to do well in school.
3. The opportunity of cross-cultural socialization enhances the students to develop coping skills, self esteem, and a sense of competition, etc.

From my conversations with some of the Alamo Navajo residents they are opposed to the closing of the Magdalena dormitory. They give me the following reasons why:

1. They feel that the decision to establish a contract school at Alamo never had the full consensus of the community to do so. Further they claim that this plan is a dream thought up by a few selfish "non-Navajos" from big Navajo and endorsed by the contract school board which barely understand and speak English to make decisions for the community.
2. The director of the contract school program, a non-Alamo Navajo, appears to dominate the members of the community and leadership of the community. He does not listen to them, the former, and he makes all the decisions.
3. The residents of Alamo Navajo want to continue to have the Magdalena dormitory in operation because they want their children to learn the English language and be able to mix with the larger society.

In addition to my other observations regarding the Alamo contract school plans I want to point out the following:

1. Physical Planning - the construction(initial) plans, location site, purchase of materials, etc., I do not recall ever seeing any call for bids in the local papers.

I thought that every time any construction or large purchases to be paid for by the U.S. Government had to be solicited by bids. The lowest bidder gets the contract. It also seems to me that using Bureau of Indian Affairs help would have been cost beneficial. I can't say for sure if this was even considered.

2. Employment - only what I have seen at Alamo Navajo, employees appear to be largely non-Alamo Navajo except for the menial jobs such as common laborer jobs which seems to be the jobs held by the Alamo Navajos.

3. Academic Program Planning - The curriculum planning, hiring of personnel, setting criteria were done largely by outside consultants according to some of the Alamo residents I have talked with. With the trend to have all teachers take tests to continue teaching in New Mexico, I hardly see that the present teachers who are non-certified(some) could possibly pass the tests. The contract school at Alamo has been operating with no accreditation and erratic school attendance.

4. The overall construction of the school has not been completed and already the closure of the Magdalena dormitory is destined for May 30, 1986. With this closure Alamo will be facing second-rate education for the reasons I have cited above. Also the students will be deprived of sharing classes with non-Alamo Navajos, all too detrimental to the social development and growth of youth. The students will also be lacking the opportunity to further learn and practice the English language. In fact it, the language will be minimal to say the least. I am not opposed to an Indian speaking his native tongue. Quite the contrary, it is my belief that the Indian language and learning of the cultural heritage is the task of the parents at home. This is how I learned and whatever I learned that is non-Indian I learned by integration and socialization in the larger society. Belief me the experience and exposure will never be duplicated by segregation and isolation.

As for the community of Magdalena, this community is small and poor to begin with. Much of the source of revenue comes from seasonal tourists, teachers employed by the public schools, U.S. Forestry, Bureau of Indian Affairs staff at the Magdalena dormitory and then there are those who are forced to work out of town such as Socorro, New Mexico some twenty-seven miles south east, Albuquerque, New Mexico one-hundred forty miles north, and others who are ranchhands on nearby ranches or self-employed through wood hauling. When the Magdalena dormitory closes, Magdalena will be poorer as ever. It is my prediction that when that happens the public schools in Magdalena will close and students will be bussed to Socorro due to the enrollment drop resulting from the implementation of the Alamo contract school.

As leaders of your States and committee members serving the interests of the Native Americans, we place our trust and faith in you that you will make the best possible decisions regarding Indian Affairs. With this in mind I ask you to take into consideration every factor and weigh justly before you make the decision to close down the Magdalena dormitory.

Sincerely,

Edwin L. Yazzie

Edwin L. Yazzie

SCHOOL EXPANSIONS

Mr. Yates. You want to convert a boarding school to a peripheral dormitory. What is the status of the school expansion?

Ms. Whiteman. As I understand it, six additional classrooms. Piñon will be converted to a dormitory.

Mr. Yates. When will that take place?

Ms. Whiteman. That conversion will occur by the beginning of this school year, as I understand it.

May I defer to Dr. Ross who has responsibility for that particular area?

Mr. Yates. Sure.

Dr. Ross. With respect to the Piñon School, I was in that neighborhood about two weeks ago, and there are at the present time six portable classrooms in place.

There was some discussion about the possibility of asking the bureau to use a couple of the additional instructional classrooms. These discussions are going on between the Cedar Public School and the Agency Superintendent.

Mr. Yates. What will be the capacity of the public school when the project is completed?

Mr. Ross. I don't know what the entire capacity will be.

We were just working with them on a partial expansion to accommodate those students currently residents within the boarding program.

Mr. Yates. Will this allow all the Piñon Boarding Schoool students to attend the public schools if they choose to?

Mr. Ross. As far as I know, yes.

HOPI HIGH SCHOOL

Mr. Yates. The new Hopi High School scheduled for completion, will it be ready for opening in the fall?

Ms. Whiteman. Yes, it will.

Mr. Yates. What will be the cost of operating these schools? Do you want to put that in the record?

Ms. Whiteman. Yes.

[The information follows:]

Cost of Operating Piñon Dormitory and Hopi High School

Funding for school year 1986/1987 for both Piñon and Hopi will be based on applicaiton of the ISEP formula to the actual students who are enrolled. Based on estimated enrollment of 550, Hopi High School would receive about $1.6 million of ISEP funding and $485,000 of O&M. In FY 1986, Piñon had 142 boarding students. If all of these students stay in the dormitory and attend public school, ISEP funding would be about $400,000 and $200,900 of O&M.

IMPACT ON PHOENIX INDIAN SCHOOL

Mr. Yates. And what will be the impact of the Hopi School opening on the Phoenix Indian Boarding School?

Ms. Whiteman. We are in the process of studying that impact and will be supplying Congress with a copy of our report this summer.

[The information follows:]

COPY OF REPORT ON IMPACT ON PHOENIX SCHOOL

The report will not be completed until the summer of 1986. When the report becomes available, a copy will be submitted for the Committee's files.

ENROLLMENT OF PHOENIX INDIAN SCHOOL

Mr. YATES. Has a cap on enrollment been placed on Phoenix this year?

Ms. WHITEMAN. I am not aware of a cap being placed on enrollment at Phoenix.

SPECIAL HIGHER EDUCATION SCHOLARSHIPS

Mr. YATES. You don't have any request for special higher education and scholarships. Do you have money for that?

Ms. WHITEMAN. That is in a new special——

Mr. YATES. Oh, yes. I remember that. That goes through the Department of Education.

Do you like the idea?

Ms. WHITEMAN. Conceptually, I support that transfer, Mr. Chairman.

Mr. YATES. Conceptually. Does that mean that you don't, heart and soul, support it?

Mr. SWIMMER. I am not going to speak for Henrietta, but she came in after the fact, so I was somewhat responsible earlier, at least for looking at that transfer, and believe the transfer of those funds from the Department of Education to the BIA will allow us to do some things that might help the school program.

Mr. YATES. All right. What is your reaction to the fact that the total for the two programs in 1986 was $3,400,000?

Your 1987 request is $2 million. How are you going to be able to do the same good work?

Before you attempt to answer that, let me remind you of a statement once made by Speaker Thomas Reed of Maine about somebody speaking on the Floor, who said, "If the gentleman's purpose is to put the oak tree back in the acorn, you are not going to succeed."

These programs are being squeezed for funds, aren't they?

Ms. WHITEMAN. Yes.

Mr. YATES. How can they succeed? Can they get along with $2 million where they required $3 million before?

You are going to have smaller programs, aren't you?

Ms. WHITEMAN. We have never been able to fund graduate students at the levels we would like to have funded them.

Mr. YATES. $3.4 million was inadequate?

Ms. WHITEMAN. Only about 80 percent of graduate students were funded under that level.

Mr. YATES. How many will be funded under the $2 million level? About 20 percent?

Ms. WHITEMAN. There will be a considerable reduction.

Mr. YATES. How important are the programs? Should the Indian people have higher education?

Ms. WHITEMAN. Yes, they should, but in terms of our priorities we have to set within the Office of Indian Education Programs, we place a higher priority upon elementary and secondary education, Mr. Chairman.

Mr. **Yates**. You mean if you were given the same amount of money you would have to cut elementary and secondary education?

Ms. **Whiteman**. Yes.

Mr. **Yates**. How important to Indian education are the higher education programs?

Ms. **Whiteman**. They are very important, Mr. Chairman, which is why we are anticipating a transfer of the $2 million over so we can continue to put money into graduate education.

Mr. **Yates**. If what you are saying is true, how can you support it conceptually?

Ms. **Whiteman**. I would like to answer that by saying that there is money in higher education provided through the banded monies, and graduate students have been funded through those programs——

Mr. **Yates**. If the tribes take money for this, they will lose money for something else under the band?

Ms. **Whiteman**. They fund graduate and undergraduate students with the funds appropriated to them, as I understand.

Mr. **Yates**. It is like a block grant proposal by the administration; let the states do it and give it a third less money, right?

Mr. **Swimmer**. Well, not let the states do it. I am not sure they are doing it.

Part of the justification for the reduction, what would be actually in that reduction is serving a different clientele, that clientele being primarily on-reservation clientele, and reducing the administrative costs of what we had before in two programs to the one program, and targeting it for particular kinds of study.

Mr. **Stangl**. I might point out, in the 1987 request under tribe agency, that the priority increase was over $1.5 million for scholarships.

Mr. **Yates**. And what happened to it?

Mr. **Stangl**. It is included in the request.

FLANDREAU INDIAN SCHOOL

Mr. **Yates**. Tell us about your reaction to the Flandreau Indian School.

Should it remain open?

Ms. **Whiteman**. Yes, it should. There has never been any intention of closing it. We are in the process of implementing our standards for dormitories.

Mr. **Yates**. How is this affected by your new standards?

Congressman Daschle says that Flandreau Indian School has about 600 students now. Under BIA's new regulation, the school may be forced to restrict enrollment.

Ms. **Whiteman**. The figure the dormitory can accommodate, according to a recent review team, is 504 students.

Mr. **Yates**. Really?

Mr. **Swimmer**. In fact, there aren't 600 students there now.

Mr. **Yates**. Well, we have a letter from the school board saying it is requesting assistance you can provide, "and help us obtain a grandfather clause for existing dormitory facilities at the school.

"A grandfather clause will enable us to open and meet the needs of 600 Indian students rather than cut back to 300 Indian students."

The question is, don't we want to serve the 600 Indian students rather than 300? Even if—are you saying they don't have 600 Indian students?

Mr. **SWIMMER**. The school population there this year, at the count date, was the first year there had ever been 600 students.

In fact, not too long after that they were much below.

Part of it could have been the overcrowding. We have never suggested the population would be limited to 300 students.

In fact, the report was only in draft form about two weeks ago, and in that report someone indicates a level of about 504, which exceeds what it has been over the past several years.

We don't view it as being a serious impact to maintain Flandreau as an active off-reservation school.

Ms. **WHITEMAN**. We have sent the report to the school for their review and comments.

HASKELL INDIAN SCHOOL

Mr. **YATES**. What are you going to do with Haskell? Haskell has a proud history, and also SIPI.

Are you increasing the opportunities for Haskell?

Mr. **SWIMMER**. I believe we are at the same level of funding in those institutions.

Mr. **YATES**. Same level of funding for an increased attendance, right? Don't you have an increased attendance coming into Haskell, according to your figures?

Mr. **SWIMMER**. I am not aware of that.

Mr. **YATES**. Let's make them aware of it.

Ms. **WHITEMAN**. I would ask Dr. Martin to respond to that issue.

Mr. **YATES**. You are going to have 1,081 this year with the same amount of money, right?

Dr. **MARTIN**. Right. I believe we are reporting in terms of FTE's which is a little different over the last two or three years, so there will be some fluctuation, because some students will only take 12 hours, 15 and 16, and so forth.

Mr. **YATES**. Why are you changing it?

Dr. **MARTIN**. We are changing the reporting procedures in order to standardize them. It is a more accurate representation.

Mr. **SWIMMER**. We are not anticipating any increase if we use the same numbers we have used before.

Dr. **MARTIN**. That is correct.

Mr. **YATES**. Haskell is up to capacity, is it not, with dormitories? If you have 81 additional students, where will they be held?

Mr. **MARTIN**. The manner in which the buildings were constructed—several years ago—they are at their capacity.

Probably, to put any more students in these facilities would not necessarily be a safe condition. The only alternative they would have would be off-campus housing.

SIPI INDIAN SCHOOL

Mr. **Yates**. You are losing FTE's at SIPI. I thought SIPI was based on last year's estimate. You are losing FTE's in SIPI. Don't you need them there?

Mr. **Martin**. These are student FTE's. What has happened in the last year is that the president changed administrative policies and they are on a semester enrollment basis.

The enrollment criteria has remained essentially the same. There have been some tightening procedures in administration at the school. As a result there have been fewer students there this year than there were last year, but I think the quality of the program has not suffered. The students are probably of a better quality, but we don't have an actual plan. We haven't done anything to reduce the student enrollment level.

Mr. **Yates**. Have you reduced the funding?

Mr. **Martin**. No, sir.

LAW ENFORCEMENT

Mr. **Yates**. Tell us about the Federal Government assuming control of Winnebago.

Mr. **Swimmer** We have had a request from the tribe. We have discussed that with the chairman there and advised the chairman that I would certainly consider that favorably.

But I have also advised him we have serious budget constraints and that as more and more tribes choose to leave State law enforcement and shift the burden to the Federal Government, that there would, in fact, be a need for those tribes to look at self-funding.

And we might be able to provide some kind of base program, but they will have to provide enhancements to it. And several of the tribes are doing it now.

The Navajo, for one, is having to add money to it for its law enforcement. This is an issue, where the state was providing law enforcement, the tribe chooses to do it.

I think it is an issue, that tribes should have that right to make that determination, but they also have to consider the budgetary impact.

Mr. **Yates**. They have to pay for it themselves, then?

Mr. **Swimmer**. We can provide a base program, but we have a budget for law enforcment and——

Mr. **Yates**. Can you do it out of existing funds?

Mr. **Swimmer**. We would be able to provide some. They have requested, I believe—I think they requested half a million dollars.

Our agency and area indicates three hundred some thousand dollars might be adequate, and in talking to the tribe we suggested something much lower than that as far as a base program.

In looking at the size of the reservation and all, even those figures greatly exceed, I think, what is being provided by the state now.

Mr. **Yates**. What happened with respect to the distribution in the conference report to redistribute $500,000 of Central Office Law Enforcement funds to the various tribes?

Has that been accomplished?

Mr. **Swimmer**. No, it hasn't.

In fact, there wasn't $500,000 available at that time to distribute. It showed from review of our budget that there was money there.

In fact, that money had been committed to other uses. We are attempting, however, to recover some of the funds that had been distributed to the tribes and redistribute them in a way the committees choose.

Mr. **Yates**. Now, the Navajos say you have taken some of the money from their law enforcement program. Is that true?

Mr. **Swimmer**. I advised the Navajo and other tribes that, in fact, we would be looking to make up the half million dollars from allocations that have been made, basically the percentage they received of the funds. The Navajo percentage of that would be something in excess of $300,000; I think $320,000 to 350,000.

And we were looking at other tribes to make similar contributions. The same thing will happen when the Winnebago and other tribes retrocede. We will have to spread the money around.

NAVAJO-HOPI SETTLEMENT PROGRAM

Mr. **Yates**. You want $2.9 million for the Navajo-Hopi settlement program, the same as 1986.

What do you mean by a "partial completion of the restoration effort"?

Mr. **Swimmer**. What we are doing, I believe, still reflects our responsibility as it was in last year's budget. That is the restoration of range to the HPL and protecting the existing grazing privileges of the relocatees waiting for relocation.

So, that is just an on-going range of improvement of program.

Mr. **Yates**. When do you think you are going to complete the effort?

Mr. **Swimmer**. At that rate it will be several years. We would be doing some each year to get the range brought into better shape. Again, this is an issue in which we have to look at the degree of improvement, rather than trying to do a complete project at once.

WATER RESOURCES

Mr. **Yates**. Now, you are asking for $465,000 for water resources. That is a cut of a $1.5 million.

What will happen to the $1.6 million added by Congress for water resources studies?

Mr. **Swimmer**. The $1.5 million we are reducing was spent on single item projects we believe are completed. That is why we didn't ask for that money to be restored to the budget.

We do have a substantial water rights fund, about $10 million that is available for continued water negotiations.

Mr. **Yates**. Yes, but those were not one-year studies. Yakima, I understand, are involved in multi-year water and soil studies.

Mr. **Swimmer**. It is my understanding we are still doing that. We would continue those studies.

Mr. **Yates**. Where are you going to get the money for it?

Mr. **Stangl**. We transferred about $7.2 million over to trust responsibilities and combined it with some litigation support money.

Mr. SWIMMER. Those projects are on-going and would be completed using those funds.

Mr. YATES. If it is in the trust area, can the tribes continue to contract for that money as they could——

Mr. SWIMMER. That is an issue that is certainly present with us, with these negotiations and the development of the information on the reservations. It has been our opinion much of the information has to be gathered independently, and it is an exercise of the trust responsibility.

So, some of those funds, yes, are not being allowed to be used by the tribe. In the past, they have been contracted. We do go through extensive consultation with the tribe as we try to develop the contractors and the methods of collecting the information. However, the actual collection of that information and review of the water rights issues is done, directed by the Bureau through independent contractors.

Some collection of information can still be done, but primarily it is done independently of the tribe.

Mr. YATES. Mr. Udall, of course, takes issue with that——

Mr. SWIMMER. Yes.

Mr. YATES [continuing]. In his letter of June 26th, which I am sure you have received.

It may go into the record at this point.

[The information follows:]

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June 26, 1985

The Honorable Donald P. Hodel
Secretary
Department of the Interior
18th and C St., N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

As both you and I are aware, the water rights claims of Indian tribes based upon the Winters doctrine are of serious concern in the water-short west. Conflicts over water rights, including the Indian claims, have spawned protracted, costly, disruptive litigation. Both your Administration and this Committee has adopted a policy to encourage Indian tribes to enter into negotiations for the settlement of these claims. While some tribes are understandably reluctant to do so, it would seem to be in the interest of all concerned parties to avoid litigation and settle these issues through negotiations.

I have had called to my attention a 1984 opinion of the Interior Associate Solicitor for Indian Affairs and the policy based upon that opinion which can have no other effect than to undermine our shared policy of negotiation. This opinion, BIA-IA-0095 of May 31, 1984, formed the foundation for the BIA policy to cease entering into contracts under P.L. 93-638 for the development of water resource data.

At my direction, the Committee staff has prepared an analysis of the opinion and the policy. I am enclosing a copy of that analysis for your consideration. Among other things, the analysis concludes that the opinion has basic legal flaws in its rationale and conclusions and that it is being misapplied in the field.

The analysis also suggests that, based upon the opinion and policy, BIA funds are improperly being diverted from the purposes for which Congress appropriated them. The analysis also suggests that, having diverted such funds, BIA is investing their new use with a trust function character and, based upon the opinion, denying Indian tribes the right to contract for those funds under P.L. 93-638.

Page Two - The Honorable Donald P. Hodel

As I am sure you know, an Indian tribe can only engage in negotiations over water rights on an even basis if it has sufficient data on the reservation water resources. The denial of the funds appropriated to assist tribes to develop such information, i.e., the Water Resources Development funds, can only result in the refusal of Indian tribes to engage in such negotiations. Already, the Chippewa-Cree Tribe of the Rocky Boy's Reservation in Montana has withdrawn from negotiations in protest of this opinion and policy. I am advised that the Flathead Tribe of Montana is also seriously considering withdrawal on this basis. I am also advised that the Rocky Boy's tribe has been threatened by BIA that, if they did not agree to a proposed BIA contract with an outside firm, funds would be shifted for the benefit of another tribe.

I am very much alarmed by this opinion and policy and the impact it will have on many Indian tribes who are seriously considering negotiations of their water claims. I strongly urge that you cause this opinion to be withdrawn and reconsidered and that the resultant policy be reappraised. I would appreciate it if you could advise me as to your decision in this matter.

With warm regard,

Sincerely,

MORRIS K. UDALL
Chairman

Mr. **Yates**. We have our bill on the Floor this afternoon, and much as you regret it, we won't be able to continue this hearing as such.

We will have questions to present that we will ask you to answer for the record, and if we have others from time to time we will also forward them to you.

Thank you very much.

[Questions and answers submitted for the record follow:]

Questions Submitted by the House Subcommittee on Appropriations

Johnson O'Malley Program

The 1987 budget request is $924,700,000, a decrease of $81,703,000 from the 1986 appropriated level. Most of the decrease is in construction (-$41,293,000); and the proposed transfer of the Johnson O'Malley program from BIA to the Department of Education (-$23,044,000).

When the Department of Education witnesses appeared before the Subcommittee last week, we discussed this proposed transfer. According to them, the proposed legislation to implement the changes in the JOM and other programs has not yet been completed for submission to the Congress.

Question: Realistically, when do you expect the legislative proposal to be submitted to the Congress? Is it likely that Congress will have time to study and enact this legislation before the start of fiscal year 1987?

Answer: While this question can best be answered by the U.S. Department of Education, the Bureau is working with them and the Office of Management and Budget to get the legislation to the Congress as soon as possible.

Question: Describe the difference in how the program would work under your proposal? How will the role of the local parent committees be changed under the proposal?

Answer: JOM funds to meet the special and unique needs of Indian children in public schools are currently provided to tribes, state agencies, or public schools districts using a student count and weighted value as the basis for the distribution.

The proposed program of the U.S. Department of Education would be in the form of grants to states for distribution to local school districts based on a count of Indian students. The program will require (1) local school district applications to be approved by the local Indian education committees, composed of Indian parents and other Indian community members; (2) public hearings; (3) local needs assessments; and (4) appointment of an Indian education advisory committee at the state level. The local Indian education committee will carry out basically the same functions as the JOM parent committees and will have parents as members.

Question: Will the same number of students be served under the proposal as are currently being served? What is the basis for your answer?

Answer: All students currently funded under both JOM and Title IV-Part A are eligible to be served by the new program. In FY 1986, JOM funded a total of 177,000 students and Title IV-Part A funded 330,700. Based on a comparison of students served in each school district under both programs, it was determined that many children are being funded by both Title IV and JOM. The estimated unduplicated student count is approximately 347,000.

Question: What will be the impact of those tribal groups which now contract for JOM programs? Will they be able to continue to contract the program, and will contract support funds be available?

Answer: Under the new program, local school districts could contract with Indian tribes and organizations for delivery of services to students. If local school districts fail to request funds, Indian tribal organizations would be authorized to receive funds directly from the states.

Question: The legislative proposal includes "hold harmless" funding language at the state level, and contract support amounts will be part of the funding level established. Local school districts and/or tribal organizations will be permitted to fund administrative costs of providing services to the Indian children.

Given the lateness of the legislative proposal, would it not be preferable to continue the BIA and Education programs as they currently are funded in FY 1987, and submit the legislation for consideration next year?

Answer: The Bureau supports this consolidated program for Indian children in public schools, because it eliminates duplication of funding and effort at the Federal level and provides a more coordinated and comprehensive program of services to Indian children.

If Congress is unable to act on the U.S. Department of Education legislation this year, some action should be considered to eliminate the duplicate counting of students which has been identified by the two Departments.

Since no legislation is required to transfer to BIA the Title IV program affecting students in BIA-funded schools, that action could be taken independent of the consolidation of the JOM and Title IV.

Question: What will be the impact of the fact that the Education programs are forward funded, and the Johnson O'Malley is not?

Answer: Since JOM would be consolidated with Title IV, it would lose its identity as a separate program and be forward funded as a part of the new program.

Question. What is the status of the revision of the JOM regulations, to meet the directive in last year's report, that JOM funds be used for supplementary services only? If the transfer to the Department of Education is not agreed to, will the revised regulations be in place in the Bureau at the start of FY 1987?

Answer: Substative revisions are being made to the regulations covering P.L. 93-638. Part 273 Education contracts under Johnson-O'Malley Act cannot be totally revised or published until revisions are completed for Parts 271 Contracts under Indian Self-Determination Act and 276 Uniform Administration Requirements for Grants. It is estimated that all three parts will be completed, published, and ready for implementation in January, 1987.

Alaska Program Funding

Question: What is the total base funding for Alaska in the budget, and what will remain, by program, if these reductions are agreed to? How were the decisions made as to how to make the cuts?

Answer: The FY 1987 Base and Request (President's Budget) amounts are as follows:

Program	FY 1987 Base	Remainder (Pres. Budget) FY 1987
Scholarships	$ 3,316,000	$ 2,314,000
Adult Education	498,000	-0-
Agriculture Extension	42,000	-0-
Other Aid to Tribal Government	2,094,000	1,499,000
Social Services	2,389,000	1,295,000
Self-Determination Services	4,490,000	3,225,000
Credit and Financing	422,000	406,000

Program	FY 1987 Base	Remainder (Pres. Budget) FY 1987
Adult Vocational Training	$ 2,712,000	$ 1,500,000
Other Employment Assistance	1,015,000	498,000
Road Maintenance	150,000	-0-
Natural Resources, General	256,000	256,000
Agriculture	843,000	555,000
Forestry	684,000	678,000
Water Resources	45,000	-0-
Wildlife and Parks	537,000	499,000
Minerals and Mining	86,000	-0-
Trust Services, General	118,000	234,000
Environmental Quality	78,000	78,000
All Other Rights Protection	5,685,000	2,259,000
Real Estate Appraisals	183,000	183,000
Other Real Estate Services	1,640,000	4,112,000*
Financial Trust Services	30,000	30,000
Executive Direction	654,000	354,000
Adminstrative Services	1,972,000	1,347,000
Facilities Management	1,287,000	39,000
Housing	2,452,000	1,655,000
TOTAL	$33,678,000	$23,016,000

* Includes $2,538,000 for cadastral surveys.

These decisions were made considering first that all trust and statutory requirements would be met. Secondly, the minimum administrative overhead for all programs was determined. This was done with certain assumptions as to efficiency, automation and the amount of Public Law 93-638 contracts. After these minimums were funded, consideration was given to other unmet needs. Funding for programs that were considered premature or inappropriate was deleted (e.g., water resources and minerals & mining since there are no large blocks of trust land or resources management responsibilties for minerals to any great extent).

Funding that was not needed (e.g., Facilities Management) was eliminated. Funds for other programs (e.g, ANCSA & ANILCA) that could be reduced and still keep pace with other Departmental adjudication and conveyances in Alaska were reduced. Finally, consideration was given to programs which were contracted under Public Law 93-638 to keep from reducing service delivery (with the full expectation that tribal contractors would also tighten their budgets, operations and overhead in these times of austere budgets.)

We feel that the decisions made as a result of the analysis utilized were appropriate. There are a number of differences between the situation of Alaska Natives and that of Indians in the lower 48 states which have led us to propose these reductions. First, Alaska Natives, currently receiving BIA services, who reside in urban areas or villages with municipal governments providing local services and/or channeling resources and services from the State, can apply for such services from these sources. Generally speaking, this is not the case in the lower 48, where BIA services are provided to Indians living on or near reservations, and who are not citizens of municipalities offering similar services. Second, because the U.S. never signed treaties with Alaska Natives, there are no tribal treaty rights to be protected. Thus, BIA spending for rights protection in Alaska should be limited to that needed to meet the requirements for specific statutes (e.g., ANCSA, ANILCA, the Alaska Native Allotment Act, and the Alaska Native Township Act). Third, there is no tribal trust land in Alaska (except Metlakatla, which is not subject to the proposed reductions and small parcels of a few acres in four villages in southeast used for canneries) to warrant the continuation of the same natural resource management programs designed for application on the lower 48 reservations. The absence of tribal trust lands and reservations also makes it difficult to justify funding programs such as road maintenance (which is only authorized to service "Indian reservation roads" under 25 USC 318a).

Federal funding is provided to Alaska Natives because of their special status as Natives by a number of Federal agencies including the Department of Education, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of Interior, the Department of Labor, and the Department of Transportation. During FY 1985, $286.1 million was provided by these agencies for special programs serving Alaska Natives, and $264 million is estimated to be provided during FY 1986. Although approximately 5 percent of the 1.4 million Native Americans identified by the 1980 U.S. Census were Alaska Natives, they are receiving approximately 10 percent of the total funding appropriated for special programs available to all Indians and Alaska Natives through these agencies. The per-capita special Federal funding for Alaska Natives is therefore approximately double the amount received by those Indians in the lower 48. Furthermore, BIA spending in Alaska represents only 16 percent and 13 percent of the total special Federal funding for Alaska Natives in 1985 and 1986, respectively. The FY 1987 budget proposal would represent a reduction from the FY 1986 total Federal funding level of only 3.7 percent.

Question: How much of the proposed reduction is related to "improved Bureau operating efficiencies"? Describe what is meant by this statement, and provide a breakdown of the specific savings related to these efficiencies.

Answer: $2,048,000 is related to improved Bureau operating efficiencies. We have analyzed all aspects of the Bureau's operations and will be able to save funds by improving the way we accomplish our mission. The following discussion further explains these efficiencies.

Facilities Management - Savings - $1,248,000 - This savings results partly from the earlier transfer of schools to the State of Alaska. The large facilities for office space and rental quarters are no longer needed at Nome and Bethel. We can much more efficiently rent commercial office space and housing can be rented by employees, thereby stimulating the local economy and removing the government as a competitor.

ANCSA Site Surveys - Savings - $500,000 - This savings will result from a continued effort to combine real estate and archeology duties in positions thus reducing staff costs. There will also be savings in personnel costs by improved automated systems to collect and format data for research and reporting purposes. Additional savings will result from eliminating a duplicate claims examiner position, and increased sharing of logistics and camp facilities.

Administration Savings - $100,000 - Automated word processing network systems will increase administrative support capabilities and reduce clerical needs by an estimated three positions. This system should be fully operable with trained staff by the start of FY 1987. The rest of the savings in administration ($484,000) are tied to other management changes.

ANILCA Savings - $200,000 - This will result from centralization of the staff hired to implement ANILCA, and concentrating all efforts to specific areas in conjunction with the ANCSA projects office and BLM (shared logistics field facilities and teamwork). Under the current operation, funds and staff have been decentralized (reducing travel and providing staff on site at each location). It is now anticipated that the centralized approach will save four or five positions and associated costs, while only minimally increasing travel costs.

Question: Are these "efficiency" savings directly related to the programmatic reductions; i.e., if the program cuts are not agreed to, would the savings still be possible?

Answer: These savings are not directly related to programmatic reductions. They are proposed to improve operations by planned management action.

School Operations Programs

Question: The request for school operations is $185,596,000, a decrease of $3,782,000 from 1986 appropriated and an increase of $4,361,000 from 1986 adjusted. Can you explain what you mean by "provide operational funding to amended Title 25 U.S.C. to redefine eligible students for Indian educational programs"? What does this involve?

Answer: In the final merging and pagination before printing, there was an error made on page 34 of the justifications. The corrected page is being provided to the Committee.

Question: The request for the Indian School Equalization Formula is $152,657,000, a decrease of $2,799,000. How is this decrease apportioned among the four items listed on page 44: phasedown of residential program related to the Hopi High School; tightening the criteria for the bilingual program; streamlining the Intensive Residential Guidance program; and converting the Pinon boarding school to a peripheral dormitory?

Answer: The distribution is as follows:

$700,000	Phasedown of residential programs related to the opening of Hopi High School
$800,000	Tightening the criteria for the bilingual program
$800,000	Streamlining the Intensive Residential Guidance program
$499,000	Converting Pinon Boarding school to a peripheral dormitory.

Question: Explain what is meant by redefining and tightening the criteria for participation in the bilingual program?

Answer: Bilingual funds under ISEP are intended for teaching children to think, speak, read, and write the English language. Professional opinion concurs that this should be accomplished in the early grades. Yet, many Bureau schools are receiving bilingual funding for high school-level students. It is the policy of the Bureau of Indian Affairs to encourage and preserve the Native culture and language as part of the language arts curriculum rather than through bilingual education at the higher levels. The revised ISEP guidelines now being drafted will be more specific on student eligibility for bilingual funding and type of bilingual education which qualifies for funding.

Question: Why have you decided this is necessary?

Answer: The Bureau's education priority is basic elementary and secondary education. In FY 1986, the bilingual funding was $3.4 million. By concentrating on the development of English skills in early grades, the Bureau will realize a savings but not affect the basic instructional programs.

Question: How will you carry out the additional monitoring of the use of these funds, and avoid duplication of Title VII programs? How is the the use of funds for the two programs supposed to differ?

Answer: The Education Line Officers have been directed to review and validate the documentation for determining eligibility for the program. Title VII bilingual funds of the U.S. Department of Education are for developmental or demonstration type programs. The bilingual funds provided by the Bureau support ongoing programs at the school level.

Question: What will you do to streamline the IRG program, and how specifically will this result in savings?

Answer: After several recent reviews of the IRG program in specific schools, the Bureau recognized that the program is not meeting the special needs of students in boarding schools, and funds are being used to augment ongoing programs. In some cases IRG funds are being provided for students who are not receiving services or for students receiving services but for whom an IRG plan has not been developed. The Bureau intends to redefine the purpose of the IRG program and to provide services only to those students who meet the criteria.

Question: What is included in the start up costs for new or expanded programs, for which $100,000 is requested?

Answer: Existing schools are funded on the basis of a student count taken in September with funding provided from the next fiscal year's appropriation. Start up funding is used primarily for "start up" costs for salaries and other costs during the period of August 15 (approximately) to October 1. That is the period between when school starts or is expanded, and when the schools participate in their first student count. Start up costs can also include such items as textbooks, food, library materials, gym equipment, and the initial purchase of supplies.

Question: Provide a breakdown of the $486,000 included for school closure costs?

Answer: Until the Bureau knows exactly how many of the school staff will not be hired by a federal agency, including the Bureau, it cannot determine the amounts needed for such items as severance pay and lump sum annual leave payments for employees in schools being closed, consolidated, or whose programs are being reduced. The schools for which these costs are expected in FY 1987 include:

Phoenix Indian High School (reduced)
Sherman Indian High School (reduced)
Toyei Boarding School (Consolidation)
Pinon Boarding School (Consolidation)
Magdalena Dormitory (Closure)

Question: What were the actual costs in FY 1985 for declining enrollment adjustments?

Answer: In FY 1985, the actual cost for declining enrollment was $343,600.

Question: When do you intend to complete the effort to identify all present surplus furniture?

Answer: The furniture repair, replacement, and surplusing activities with the Office of Indian Education Programs will be an ongoing function of school operations.

This program began in FY 1986 with Western Navajo Agency as the pilot. To date, 8 out of 14 schools within the Western Navajo Agency have been surveyed by the Office of Facilities Management. Additionally, the schools which have been officially closed to date have been surveyed. All excess furniture has been surplused. All furniture which can be repaired has been identified in these same schools.

Efforts are underway to finalize a contract with La Tuna Federal Prison, La Tuna, Texas, to repair wooden furniture which is repairable. It is estimated that in FY 1986, 12 semi-trailer loads of furniture will be sent to La Tuna Federal Prison for repair. The prison work load is estimated to be two (2) semi-trailer loads per month.

The furniture which has been identified as repairable at Snowflake Dormitory and the closed portion of Toyei Boarding School, both located in the Fort Defiance Agency, will be transported to La Tuna Prison first. This will not cause any disruption of classroom instruction. As soon as this furniture has been repaired, it will be picked up and delivered. This cycle will be repeated until all schools have had their school furniture repaired.

Question: Do you have any information yet on the four pilot gifted and talented projects? How long will they run before you decide what kind of program to initiate?

Answer: Since the funds were not available until late in the fiscal year, we do not have sufficient information from the pilot projects to decide on an approach for the total school system. We intend to continue the pilot projects in FY 1987 and FY 1988.

Education Standards Implementation

Question: The request for implementation of education standards is $300,000, a decrease of $1,200,000. Were additional staff added in FY 1986 as part of this effort? If so, how will the costs for them be covered in FY 1987 and beyond? If not, what staffing adjustments were made?

Answer: No. Funds were not intended to pay for additional staff. A survey of Bureau schools indicated that sufficient numbers of staff were available, but in some cases, they were not in areas required by the standards. Funds have been provided to schools which identified training needs for teachers to meet certification requirements or to be recertified in a field needed by the school to meet the standards.

Question: How long will the professional staff training for state certification continue? How many staff are being trained each year?

Answer: We expect the staff training for state certification to continue for at least two more years. The major part of the staff training will be done in the next two summer school sessions and during the school year for staff having access to higher education institutions. While we are updating the list of staff who still need courses in order to receive state certification, our estimate is that approximately 300 status quo professional teachers, librarians, counselors, and administrators will need some training.

Question: How many will be certified in FY 1986?

Answer: Since many of the Education professional staff seeking state certification will not be taking courses until this summer, the Bureau cannot provide an exact number at this time.

Institutionalized Handicapped Program

Question: The request for the institutionalized handicapped program is $2,328,000, the same the last two years. Have there been no cost increases in the past two years in this program? If there have been, how have they been provided for?

Answer: Cost increases have been offset by a slight decline in number of children served.

Question: Is the number of individuals served staying the same, or has it declined?

Answer: The number of children served has declined.

School Boards

Question: The request for school boards is $1,235,000, the same as FY 1986. This includes $723,000 for expenses, and $512,000 for training. In addition to the weighted factors used in distributing the expense funds, is there any provision for additional flexibility, such as for special meetings required, etc.?

Answer: No.

Student Transportation

Question: The request for student transportation is $11,639,000, the same as FY 1986. What has your experience been this year with the new rate per mile of $1.32? Is this adequate to meet the actual costs?

Answer: Data for the school year will not be available until early this summer. As expected, the new formula benefited day schools where previous costs exceeded funding. We expect to analyze the actual expenses and will modify the formula if necessary.

Question: Is the Navajo area the only one requiring an adjustment because of the state of the roads on the reservation?

Answer: Yes.

Education MIS

Question: You are requesting $674,000 for Education MIS, the same as FY 1986, but distributed differently. Explain the bases for the difference in distribution among the various items included in the technical program.

Answer: The MIS Education budget for FY 1987 includes an additional $45,000 for systems development. In FY 1986 our emphasis is on implementing the Student Enrollment and Attendance System (SEAS) and on planning and beginning the developmental work on the other MIS systems. In FY 1987, we will need more resources to complete the development and implementation of the systems listed in the budget justification.

We have split the costs for purchasing microcomputers for schools over two fiscal years. Although most of our schools have microcomputers for instructional purposes, each school will need a microcomputer to operate the various MIS systems being developed. We will need less resources in FY 1987 because the costs for microcomputers has decreased.

We anticipate a decrease in the costs for ADP services as more Bureau's ADP systems are transferred from Martin-Marietta Data Systems to the AADIX system in FY 1987. The increase of $39,000 is for salaries and miscellaneous expenses.

Question: What is the status of the contract that was to be awarded early in FY 1986 for pilot testing and other activities related to the Student Enrollment and Attendance System?

Answer: The development of the microcomputer based Student Enrollment and Attendance System (SEAS) has been completed by the Minnesota Educational Computing Corporation (MECC). Final payment for the work MECC conducted on the contract has been forwarded to the Albuquerque Area Finance office for processing. We plan to implement the SEAS in as many BIA schools as possible in FY 1986. The contract for the implementation of the SEAS will include a pilot test of the system and revisions to the system based on input from school personnel. The SEAS will be implemented in the remainder of the schools in FY 1987.

School Operations Contract Support

Question: You are showing a base amount for school operations contract support of $7,188,000. Why is this reduced from the amount shown in last year's budget ($7,732,000)?

Answer: The base amount of $7,188,000 reflects the FY 1986 Senate cut of $500,000 from school operations contract support which was upheld in conference and the effects of the 0.6% across-the-board cut applied by Congress in the FY 1986 Continuing Resolution.

$ 7,732,000	Original FY 1986 Request
- 500,000	Senate action
- 44,000	0.6% Cut Adjustment
$ 7,188,000	FY 1987 Base and Request

Higher Education Programs

Question: There is no request for special higher education (scholarships), which as mentioned previously is being consolidated with the Department of Education Fellowship program under a new activity. What is the status of the single contract to be awarded for both the graduate scholarships and law school scholarships in FY 1986? What kind of administrative savings are you expecting from having a single contract?

Answer: The contract proposals have been reviewed and ranked by a special panel. Their comments and proposed ranking are currently with the Office of Indian Education Programs, for recommendation prior to awarding the contract.

In FY 1986, the Senate cut $200,000 from the Special Higher Education Program for the savings in administrative costs; $100,000 was restored in conference. Therefore, the FY 1986 level has already been reduced for administrative costs and no further savings are anticipated in FY 1987.

Question: Will more students be served as a result?

Answer: No. Since the funds were deleted from the Bureau's budget, they will no longer be available to fund students. The fellowship program will be offered as a substitute.

Question: What is the potential impact of no longer having the summer law institute? Were there other contributions, from law schools for example, that are likely to be lost if the American Indian Law Center is no longer involved in the program?

Answer: There may be less emphasis on law as a result of the closure of the summer institute, since the institute more actively recruited for law, and since it also prepared interns who otherwise would not have been accepted into law school. Because of the relationship developed over 17 years, there may be some losses of in-kind contributions from both the University of New Mexico and other law schools which have worked with the Law Center. However, there will be greater access to the other critical fields since previously approximately half of the Special Higher Education funds were spent through the law school contract. The critical fields have been ranked by the Bureau as follows:

1. Business Administration
2. Natural Resources
3. Medicine and Related Health Fields
4. Engineering
5. Law
6. Education (Special Education emphasis)

Tribally Controlled Community Colleges

Question: The request for tribally controlled community colleges is $10,903,000, a decrease of $432,000. What is the status of the revised regulations for this program?

Answer: The proposed regulations have been finalized to reflect comments received from TCCC officials. They are in the review process by Bureau and Department staff and the Bureau hopes to publish, them as proposed, early this summer.

Question: Why do you agree with the IG that implementation of the regulations could result in a reduction of eligible FTE's of 15%? What is the basis for this figure?

Answer: The Bureau feels strongly that the TCCCs should provide a quality post-secondary education, and that students should be working towards a degree. The revised TCCC regulations will require that students to be funded must:

1) have a high school diploma or equivalent (GED);
2) make satisfactory progress toward a degree; and
3) maintain a 2.0 grade point average.

Some of the presently enrolled students will not meet these criteria, and therefore while they may continue to attend college, they will be ineligible for funding from BIA.

Question: Will your regulations place requirements on the colleges that are more stringent than those required under accreditation requirements? If so, why should the colleges have to exceed accreditation requirements in order to be funded?

Answer: No, our regulations are consistent with accreditation requirements and do not exceed these requirements.

Tribal Government Services

Question: The request for Tribal Government Service is $5,604,000, a reduction of $206,000 from the base. Under community services general, what is included in the $315,000 for Central Office operations, in addition to funding for the four positions? Why are CO costs higher than Area Office funding ($281,000, including 9 positions)?

Answer: The $315,000 covers the salaries, travel and related operating costs for the immediate office of the Deputy to the Assistant Secretary - Tribal Services. There are 3 professional and one clerical position. Area Office staff in many instances, consist of only one professional and one clerical; therefore, per position costs are much lower.

Question: Since each program under Indian Services has its own staff funding at Central Office and Area Offices, why are these staffs and funding necessary to provide "staff specialists" on all matters related to the entire Indian Services Program?

Answer: These staffs at Central/Area offices provide intermediate management support for the Area Directors or Central Office Deputies/Directors and numerous Indian Services program managers. In some cases, at the area office level, where funds are not available to hire specialists in small programs, these staffs also manage one or more program.

Question: What is the cost related to the Federal acknowledgement program?

Answer: This fiscal year it will cost approximately $370,000 for salaries, travel, and other administrative costs. The staff for this function consists of 9 positions: one Branch Chief, 6 researchers and 2 secretaries.

Question: At the rate funded, when do you expect to complete action on the 99 groups which have petitioned for Federal recognition? Could it be done faster?

Answer: We expect to substantially complete the project in 20 years. The rate of completion is largely dependent on the petitioners. There are presently 82 petitions (out of a total of 106 submitted) which have not been evaluated. However, 64 of these are merely undocumented letters of intent to petition, which typically state that the group is working on its petition and will submit the required documentation at a later date. Only 4 petitions are currently complete and awaiting evaluation. The 20 year estimate allows for both potential new petitioners and the probability that a number of petitioners will never submit documentation. The Branch evaluates an average of 4 petitions each year. We are operating at optimum speed.

Social Services Programs

Question: The request for Social Services is $93,103,000, an increase of $1,190,000 from the base. How exactly will be $100,000 increase requested for the Central Office Quality Control Unit be used? What have you done to date this year with the funds added in FY 1986?

Answer: The $100,000 increase requested for the Central Office Quality Control Unit annualizes the staff increase effected during FY 1986 in compliance with the Congressional provision of $200,000.

In FY 1986, the Bureau has detailed staff into Central Office to assist Central Office specialists in this effort. Significant work has been accomplished including: development of draft procedures and guidelines, development of an instrument to measure quality control in the field, scheduling of field tests of the instrument in nine locations in April and May, development of the organizational restructuring of the Division of Social Services to include a separate branch for Quality Control, the development of branch functions and appropriate position descriptions for the purpose of recruitment. The Division of Social Services expects to fill the Quality Control Branch positions in the near future. In the meantime, Central Office staff and Area Office staff will be heavily involved in the required work and will be traveling extensively to field test the instrument and draft procedures. Additional funding in FY 1987 will enable the BIA to hire additional staff which will be necessary to implement the quality control effort nationwide.

Question: $108,000 is included for the Solo Parent Program, the same as FY 1986. How many students are participating in the program this year? How does that compare with prior years?

Answer: Enrollment in the Solo Parent Program has remained fairly constant since it has been established at the two schools:

	1984	1985	1986
Flandreau	8	8	9
Sherman	12	12	11

Question: What is the total cost of the program at the two schools? Where does the balance of funding come from?

Answer: In addition to the $108,000 which Social Services provides to the schools for the Solo Parent Program, the schools generate Education funds on the basis of weighted student units. The total cost of the program in FY 1986 is $215,000.

	Social Services	ISEP
Flandreau	$ 44,000	$ 48,000
Sherman	64,000	59,000
	$108,000	$107,000

Question: The request for welfare assistance is $85,237,000, an increase of $3,833,000; while Indian Child Welfare Act grants decreased by 2,710,000 to 6,110,000. Last year, you estimated the persons per month receiving general assistance at 72,500 in 1986; now the estimate is 70,500. Please explain.

Answer: The estimate of 72,500 for FY 1986 previously made in 1985 was too high but was based on data available at that time. Because the budget cycle requires the Bureau to make estimates almost two years in advance, some of the data is out of date by the time the budget amounts are appropriated.

Question: What has been your experience to date in 1986 in welfare assistance? Are you expecting a shortfall as in prior years?

Answer: The Bureau's social services program, based on the mid-year analysis projects that approximately $2.3 million may be required in order to maintain the current level of payments to all estimated eligible recipients through the remainder of the fiscal year. The Bureau is in the process of assessing its alternatives to deal with the total welfare needs for FY 1986.

Question: What are you doing to address the Congressional directive in the Conference Report regarding managing the program so as not to run out of funds before the end of the year?

Answer: The Bureau is doing everything within its power to manage the program so as to prevent running out of funds by the end of the year. Directives have been issued to field managers and they are attempting to manage their budgets in a responsible manner. However, they are required to meet need and to utilize state AFDC payment standards by regulation and as a result they do not have the flexibility to arbitrarily cut costs. Should the additional requirements materialize, the Bureau will consider alternatives to meet its obligations.

Question: Where exactly have AFDC payments been increased, or are expected to increase? Are there any states where the rates might be decreased, such as Oklahoma, due to the declining revenues because of decreased oil prices? Would this make any difference in your estimate?

Answer: AFDC payments have been increased in FY 1986 in Arizona. At this time, we do not have any information regarding specific increases expected in the immediate future in other states. The State of Oklahoma is considering a decrease. However, the Bureau currently estimates that the savings would probably not be substantial because Oklahoma comprises a small portion of the Bureau's general assistance budget.

Question: How much of the decrease in ICWA grants is due to discontinuing the program in Alaska, and how much to not funding urban programs?

Answer: The proposed decrease in ICWA grants consists of $710,000 for discontinuing the program in Alaska and $2,000,000 for discontinuing the programs for urban organizations.

Question: Congress has not agreed to this proposal in the past. Why are you proposing it again?

Answer: As noted in the President's budget, there are other sources of funding available to urban Indians and to Native Alaskans. Given this situation, the BIA has determined that it can accomplish its mission in this area with less financial resources in maintaining basic programs critical to the welfare of Indians. The BIA's assessment is that there are resources in the State of Alaska which can pick up the services provided under ICWA. The BIA will maintain its family and community service contracts with Alaska Native organizations which in FY 1986 exceed one million dollars. The decision to discontinue services to off-reservation urban organizations will allow the Bureau to focus its resources upon its basic constituency of federally recognized tribes in the continental 48 states.

Question: If you are concerned about the quality of reservation programs, why don't you propose switching the funds to reservations, rather than deleting them?

Answer: In FY 1987 reservation programs would receive approximately the same level of funding as in previous fiscal years. Switching the funds to reservation programs would not necessarily increase the quality of the programs in question. However, the Bureau social services staff would be able to provide more technical assistance to reservation programs and this would, we believe, lead to better quality programs.

Question: Is there anything in the authorizing legislation which indicates the program is for reservation Indians only?

Answer: There is nothing in the authorizing legislation which specifically addresses ICWA services or where the program is to be provided.

Law Enforcement Programs

Question: The request for Law Enforcement is $1,433,000, an increase of $506,000 from the base. $100,000 is included for detention center expansions. How exactly will these funds be used? How many centers will receive equipment? Provide a breakdown by center for record.

Answer: The $100,000 will be used for basic equipment, such as; steel bunkbeds, fireproof mattresses, surveilance equipment, administrative desks, chairs and tables. At this time we are unable to provide a list of the specific detention centers which will be assisted. They will be identified as they are completed and funded on an as needed basis.

Question: There is an increase of $500,000 for hiring 12 criminal investigators. Where are they likely to serve?

Answer: The twelve criminal investigators will be assigned to areas with high major crime incidents. The specific locations have not been identified at this time. Administrative planning currently being done will determine these assignments. The criminal investigators will be specially trained to investigate allegation of child molestation, sexual abuse, and narcotics violations. It is intended they will be mobile, available for short term assignments to areas with upsurges in major crimes to do the investigative work and accelerate the prosecution rate.

Question: How many cases under the Major Crimes Act have not been prosecuted in recent years, due to lack of adequate criminal investigation?

Answer: In calendar year 1985, a total of 4,425 actual felonies were reported. Of these 1,667 (37.67 percent) were pending, as of April 1, 1986. Federal declinations totalled 189 (4.27 percent). During calendar year 1984, 4,002 actual felonies occurred with 1,594 (39.63 percent) pending, as of November 1985. Federal declinations totalled 267 (6.67 percent). We are unable to report the number of cases declined by the U.S. Attorneys because of inadequate investigations as this information is not available. We queried the FBI and U.S. Attorney's Office for this information; however, they were unable to provide specific numbers.

Question: Provide a breakdown of the requested increase, including salary and lapse rate used.

Answer: The salary rate of GS-11/5 was used, which with personal benefits would total $300,000 with a lapse rate of 25%. The remaining $200,000 would cover related expenses such as equipment, travel, supplies and a limited number of vehicles.

Self Determination Services

Question: You are requesting an increase of $200,000 for training and technical assistance. How will you be able to meet the increased requirements for technical assistance, without additional staff?

Answer: Since most of the $200,000 will be used to contract with outside organizations for technical assistance, we will not need additional staff to administer the contracts. At the time the budget was prepared, the Bureau planned to have part of the work done inhouse. Later, we determined this was impractical and could be done more effectively and efficiently through contracting. The Tribal Accounting and Administrative Services (TAAS) group is being abolished in favor of contracting with local CPA firms at significantly reduced cost.

Question: What are the expected sources of funds to be used for technical assistance contracts with outside organizations?

Answer: The major portion of the $200,000 requested increase in addition to the $368,000 requested for Tribal Accounting and Administrative Services (TAAS) in the base will be used for contracts with outside organizations. At this point, we have not identified a need for other sources of funding.

Question: The request for contract support is $7,586,000, an increase of $5,564,000. Explain the errors and omissions related to the pre-1985 contracts, for which $818,000 is requested.

Answer: Beginning with FY 1985, the Bureau combined Contract Support Funds (CSF) with program funds. Previously CSF was identified under a single line item and was distributed each year based on requests from the area offices. In the process of making permanent equitable distribution by area, by program, we discovered that many contracts negotiated late in FY 1984 were not covered and others had been inadvertently omitted in the data collection process used for the initial fund distribution. Rather than to go through the untenable process of withdrawing CSF amounts already distributed and identified as available program dollars in well over 1,000 negotiated contracts, the Bureau has elected to request additional funds in the FY 1987 budget to cover the pre-FY 1985 contracts in which errors and omissions were made.

Question: What is the basis of the 92.5% level for 1985 contracts, for which $2,256,000 is requested? What is the current level being provided?

Answer: At the time that the initial distribution of CSF was made, based on FY 1984 indirect cost rates, equitable distribution of available FY 1985 CSF was calculated at 92.5%. We have tried to continue this level of maintenance.

Question: Last year, the amount shown for new 1986 contracts was $1,440,000; now it is $$1,550,000. Please explain.

Answer: The $1,440,000 amount referred to and as shown in the FY 1986 justifications was the total amount requested for the Contract Support line item. It was not requested just for new FY 1986 contracts. Within the "base" portion of the request ($390,000), funds were provided to cover employee displacement costs (estimated at about $200,000). The balance of the "base" ($100,000) was for indirect costs of new contracts initiated in FY 1985 and the increase ($1,050,000) was justified for the indirect costs of FY 1986 contracts. The final amount actually appropriated in FY 1986 was $1,940,000 (pre-Gramm-Rudman-Hollings).

The $1,550,000 amount referred to represents the original base allocation to FY 1986 new contracts as shown in the FY 1987 justifications. In reality, we have reestimated our total needs for new FY 1985 and FY 1986 contracts to be $2,446,000 and $2,061,000 respectively. The FY 1985 amount is based upon actual contracting levels. The actual FY 1986 amount required will not be known until the end of FY 1986. Because available information on actual contracting lags two years behind the budget cycle (e.g., at the time the FY 1986 budget was submitted, we could not identify all new FY 1985 and no new FY 1986 contracts) we must continue to propose a CSF line item to cover the two years prior to the budget year.

Question: What is your experience to date in 1986 regarding new contract activity? Does it change the projected needs in the budget?

Answer: To date, in FY 1986, over $13 million of new contracting activity has been reported. This increased activity, along with the necessity to also cover new FY 1985 contracts out of the FY 1986 CSF line item, will allow the Bureau to meet approximately 28 percent of contractor indirect cost for new contracts. The Bureau is reviewing its options to provide a more equitable amount of CSF to these new contracts.

Question: Do the 1986 and 1987 amounts assume a 15.5% rate?

Answer: No, they are based on 92.5% of the most recent actual experience.

Question: What have you done to address the direction in the 1986 Conference Report regarding reviewing all contracts rather than grandfathering the existing rates?

Answer: We believe we are in compliance with the FY 1986 Conference Report. The review of contractor costs and expenditures by the Bureau and the Inspector General is a continuing process. The Bureau did not "grandfather in" rates, but rather the amounts based on rates. When this action was accomplished, base amounts to finance both direct and indirect costs were established for each contract. We expect that indirect cost rates will change annually and contractors can totally meet these rates within the established program base amounts if they chose to do so. Contractors will continue to be audited for allowable costs.

Question: The request for small tribes Core Management is $2,821,000, a decrease of $1,679,000. What is the rationale for not continuing the waiver which allowed you to serve Alaska Native Corporations under this program?

Answer: The discontinuation of the Core Management program for Alaska is consistent with the overall policy decision to phase down Bureau programs in Alaska and the overall goal of the program, i.e., to assist small tribes. The Alaska Native Corporations are not tribes and would not qualify for the program without the waiver.

Question: How do you determine what the "maintenance" level is for the other programs? Why does this result in a decrease of $1,000,000?

Answer: We assume "other programs" refers to the Core Management program. The maintenance level was determined by a review and assessment of the program after three years of funding. Therefore, maintenance level as applied to this program means operating the program at a fairly consistent annual level of funding which will allow the Bureau to assist eligible small tribes to achieve and maintain a level of management capability essential to operate Bureau and other federal programs under P.L. 93-638 contracts. As tribes achieve this status, other eligible small tribes will be brought into this program. Over time, the program will allow all eligible tribes to participate and allow the Bureau to assist such tribes in a cost effective manner. Under this "maintenance" level approach, the Bureau will maintain an adequate program, allowing a substantial number of small tribes to participate on an annual basis.

The decrease of $1,000,000 was arrived at by taking into account other tribal program budget needs, such as Contract Support, Self-Determination grants, Aid to Tribal Government, etc. The decrease also assumes that the number of tribes needing this assitance will diminish over the years until we reach the point where few or no tribes will need this assistance.

Employment Development Programs

Question: The request for employment assistance is $2,593,000, a reduction of $506,000 from the base. $104,000 and FTE's are included for Area Office Operations in direct employment, and $154,000 and 2 FTE's in Adult Vocational Training. Where are these staff located?

Answer: One Direct Employment staff position is located at each of the Phoenix, Portland, Muskogee, and Juneau Areas. The two Adult Vocational staff are located at the Navajo Area.

Question: Why are staff needed at some Area Offices and not others for this program?

Answer: Staffing needs at the area level are determined by the area director based on identified need. A director may decide that he does not need staff at the area office level to assist him in carrying out his responsibilities because the activity can be adequately carried out at the tribe/agency level.

Question: Where will the reduction of 2 FTE's in 1987 be taken?

Answer: The reduction will be taken at the Navajo Area.

Question: $99,000 is included for the United Sioux Tribes Development Corporation. How long has this program been underway? What have the results been?

Answer: The United Sioux Tribes Development Corporation has had a Direct Employment contract with the Bureau since November 1970. The contract has been administered through the Aberdeen Area office.

An FY 1985 Report indicates the following:

Provided employment counseling - 3,391 clients
Job placements - 51 (with financial assistance)
Job placements - 282 (without financial assistance)
Average cost per client (above 51) - $510.95

The contract amount of $99,000 includes contract administration and indirect cost. Aberdeen Area will continue to monitor this contract.

Question: What is meant by the statement in the budget that the Corporation provides "job development in those fields of employment which permit a client to adopt a lifestyle consistent with his/her desires within the community as a whole"? How is this accomplished?

Answer: Clients are placed in employment consistent with their skills, knowledge, and ability. They are placed in those jobs that will provide them with income that permits them to adopt a lifestyle consistent with their personal desires. Usually they may start off in the style of living which they are most accustomed to, reservation living, but as they begin receiving income, they also begin to realize that they can do better and will modify and improve their life style.

Question: A decrease of $497,000 is provided for the one-time grant to the Crownpoint Institute of Technology. What sources of funds are avaiable to the CIT for regular operations? Do you know how successful the Institute has been in gaining funding from these sources?

Answer: The Navajo Tribe provides some funding. Funding is received from the Department of Education to administer the GED program. The State of New Mexico provides some funding. The Bureau's adult vocational training program funds some of the students. CIT is approved for the Pell Grant program, VA assistance, and New Mexico Employment Security.

To our knowledge, CIT was having some difficulty in its administration and funding. Under the present administration, it appears that CIT will soon be operating on a sound basis and this should assist them in gaining funding from these resources.

Economic Development Programs

Question: An increase of $1,068,000 is requested for the economic development grant program. What is the total amount of requests received to date in FY 1986? How much of this is from tribes, and how much for individuals?

Answer: We have received 19 Tribal grant requests in fiscal year 1986 totaling $2.8 million. In addition there were 7 Tribal grant requests carried over from fiscal year 1985 totaling another $1.5 million. Tribal grant requests to date total $4.3 million. We have approximately 150 individual grant requests totaling approximately $2.3 million.

Question: What has been the experience with the grants awarded to date since the inception of the program? How many of the activities funded are continuing? Do you have any estimates of the total economic activity generated, compared to the cost of the grants provided?

Answer: There have been 55 Tribal grants awarded since the program began in 1983. CERCO, a tribally owned oil company, which was awarded a grant in 1983, is in bankruptcy. Four other grants awarded have not been successful in acquiring the 75 percent matching funds and the grant awards may be withdrawn, since the original commitments for matching funds have not materialized. The other grants are operating, or are in the process of getting started (construction, etc).

The $14 million in grants awarded generated matching funds in the amount of $85.8 million from tribal resources and private sector investment. These grants provided employment for approximately 800 tribal members.

Question: Why are you proposing this increase of over 14% for FY 1987?

Answer: Our request for a 14% increase in economic development grant funds is primarily due to the grant program being opened up to individuals. During the first quarter of the FY 1986 program we have requests from 150 applicants totaling $2.3 million. As individuals become more aware of this program, individual applications will increase substantially. Lower interest rates and a stronger economy should also be a factor for increased demand.

Road Maintenance

Question: The request for road maintenance is $314,000, a decrease of $5,000 from the base (most of the program, which totalled $23,069,000 in 1986, has been transferred to the new Tribe/Agency operations program). The request includes $214,000 for road sealing, required by the Surface Transportation Assistance Act of 1982. Is this an adequate amount to avoid disapproval of construction projects, due to lack of adequate maintenance?

Answer: Yes, the amount requested ($214,000) for FY 1987 is adequate for needs for sealing, in FY 1987, pavements constructed with Highway Trust Funds (HTF).

The average time between original construction and need for sealing to prevent excessive deterioration is seven years. Our first HTF pavements were constructed in FY 1983, and sealing needs in the first four years are minimal. Some roads, due to climatic conditions, will require sealing sooner than the average. We expect the sealing need on HTF pavements will begin increasing by FY 1988.

Forestry Programs

Question: The request for forestry is $3,668,000, a reduction of $4,222,000 from the base. Included is $1,193,000 and 27 FTE's for Central Office staff. Why is a large Washington staff needed for this program?

Answer: The staff located in Washington, D.C. totals six positions. In addition, six positions are located in Boise, Idaho at the Boise Interagency Fire Center (BIFC) and ten in Portland, Oregon at the Branch of Forest Resources Planning (BOFRP). Also included as Central Office FTE are five Electronic Technician training positions located at BIFC.

The staff located in Boise and Portland provide direct field assistance to Area and Agency locations in the fire management and the forest inventory and management planning programs.

The staff located in Washington, D.C. provide policy direction, guidance and oversight for the operation of the forestry programs nationally.

Question: Provide a breakdown of the positions and costs for the record.

Answer: Following is a breakdown of positions and costs by location:

Location	Positions	Cost	
Washington, D.C.	Forester	$ 55,746	
	Forester	48,873	
	Forester	47,392	
	Program Specialist	29,897	
	Secretary	19,012	
	Staff Support Clerk	15,350	
	Sub-Total		$ 216,270
Portland, Oregon	Forester	51,326	
	Forester	40,779	
	Forester	41,358	
	Forester	31,619	
	Forester	31,619	
	Forester	48,563	
	Forester	43,864	
	Forester	37,599	
	Secretary	16,040	
	Staff Support Clerk	14,390	
	Sub-Total		$ 357,157
Boise, Idaho	Forester	52,927	
	Forester	42,611	
	Forester	37,943	
	Aviation Mgmt. Specialist	37,599	
	Secretary	19,250	
	File Program Clerk	16,790	

Location	Positions	Cost
Boise, ID (Cont.)	Electronic Technician	23,030
	Electronic Technician	17,824
	Electronic Technician	(Funded/Alb. Area)
	Electronic Technician	(Funded/Alb. Area)
	Electronic Technician	(Funded/Phx. Area)
	Sub-Total	$ 247,974
	Total Salaries	821,401
	Employee Benefit Contrib.	90,354
	6% Lapse	-55,000
	Total Personnel Services & EBC	$856,755
	Travel	68,000
	Rents, Communications & Utilities	24,500
	Contracts	190,945
	Training	10,500
	Supplies	26,300
	Equipment & Furniture	16,000
	TOTAL REQUEST...........................	$1,193,000

Question: Why are there no actual workload data figures available for FY 1985? If they are now available, in whole or part, provide for the record.

Answer: Workload data is generally estimated every fiscal year. According to our FY-85 Report of actual Timber Cut, the volume of timber harvested was 646,469 MBM. The value of timber harvested was $48,132,215.

Question: The budget also proposes eliminating the program to replace unsafe and inefficient fire equipment, which was funded at $415,000 in 1986. Why are you proposing to go back to the way equipment was replaced in the past, i.e., by using any "available" funds in the Tribe/Agency forestry program? How effective was this method of replacing equipment?

Answer: Prior to FY 1985, the appropriation ($600,000 to $800,000) in the Bureau's budget request for fire suppression was used to fund seasonal fire positions. Beginning in FY 1985, this appropriation ($418,000) was identified as funding to replace capitalized equipment and fire positions were funded through the Bureau's Normal Fire Year Planning process using supplemental appropriations.

Gramm-Rudman-Hollins budget cuts in FY 1986 made it necessary to eliminate activities or programs which may be funded through other means. In the case of fire suppression, needed equipment could be leased and charged against fire suppression activities (supplemental appropriations), thereby not requiring the use of regular appropriations.

Staff must be maintained to supervise and manage the overall forestry fire program. At locations with large programs, there is usually some position lapse funding available to replace the most outdated and unsafe equipment. Smaller programs have had to rely on hand-me-downs which were inefficient and require high maintenance outlays charged against the fire suppression account.

Question: Are there likely to be "available" funds for this purpose?

Answer: The Bureau anticipates that funds will be available to replace equipment at some, but not all, locations.

Question: What is the backlog of equipment requiring replacement?

Answer: Based on the 1986 Normal Fire Year Plan submissions, $5,600,000 would be required to completely modernize our fire suppression equipment.

Water Resources Programs

Question: The request for water resources is $465,000, a decrease of $1,500,000. What will happen to the $1,600,000 added by Congress in 1986 for water resource studies, including $364,000 for the Flathead reservation?

Answer: The FY 1986 funds added by the Congress for high priority studies, including Zuni and Flathead, were transferred to the Water Rights Negotiation/Litigation program under the Trust Responsibilities activity, from which funding will continue.

Question: What would be required, in terms of developing active water use?

Answer: Tribes need to attain management and planning capability, based upon information provided by the U.S. during coordination of water rights resolution actions. In the absence of construction funding for developing active water use, providing funding for development planning would be premature.

Question: Shouldn't planning continue, so as to be ready when funds do become available ?

Answer: Yes, and a certain threshold of tribal planning is occuring based upon data which has been made available by the U.S. incident to litigation and negotiations. Such information is useful base-line data upon which tribes can establish management and planning capabilities regarding development of their water resources. The Bureau continues to stress to tribes the value of the information in connection with future active water use development.

Question: What is the identified need for planning that could be continued in FY 1987, if funds were available?

Answer: It is estimated that 68 new activity reports prepared by the Bureau pursuant to the 10 Year Plan for review of Indian Water Claims will be made available to tribes for the planning or initiation of management and planning capabilities. It is too early for the Bureau to assess what the costs to tribes might be for specific development planning in relation to these reports. In any event, the Water Resources program is also on the tribal priority system. If a specific tribe wishes to initiate detailed planning for the use of identified water rights, they could adjust their program priorities to finance such planning.

Question: Last year, you requested an increase of $2,000,000 for water policy implementation, for resource data collection for water claim negotiations. How are those funds being used in FY 1986? How much will be available for the same purpose in FY 1987? Under what line item? How will these funds be used?

Answer: In FY 1986 these funds are being used for resource data collection required by the U.S. in determining feasible ranges for the negotiated settlement of Indian water claims. The studies are prepared in anticipation of litigation if negotiations fail.

In FY 1987 the funds will be used for the same purpose and will be funded under the Negotiation/Litigation line item. The Bureau has requested $10,353,000 for Negotiation/Litigation in FY 1987.

Wildlife and Parks Programs

Question: The request for Wildlife & Parks is $8,797,000, an increase of $110,000. Where are the four biologists in the Bureau, outside of the Central Office, located? Is this an adequate number to meet the Bureau's responsibilities?

Answer: In addition to the two biologists located in the Central Office, professional fish and/or wildlife biologists are also located in the Portland Area Office (2), Albuquerque Area Office (2), Navajo Area Office (2), Flathead Agency (2), Hoopa Agency (1), and Lower Brule Agency (1), for a total of 10 outside of the Central Office. Three of these positions were filled within the last year. The four Agency biologists provide technical assistance to the respective tribes, leaving six professional biologists to help administer the program in the Portland, Albuquerque and Navajo Areas. In the other Areas, less intensive fish and wildlife program responsibilities have been assigned to other personnel (e.g., range and soil conservation specialists). The positions are adequate to meet the Bureau's responsibilities.

Question: As part of the national grizzly bear recovery effort, the Committee has been informed that an add-on of $145,000 is required, consisting of $120,000 and one-FTE to conduct grizzly bear surveys on the Blackfeet Reservation; and $20,000 for a grizzly bear habitat component inventory on the Flathead. Do you agree these funds are needed to allow the grizzly bear recovery effort to proceed?

Answer: The National Grizzly Bear Recovery Plan defines the National Continental Divide Grizzly Bear Ecosystem in Montana. Within this area, the Bureau administers two Indian reservations, the Flathead, located immediately north of Missoula, and the Blackfeet, adjacent to the eastern boundary of Glacier National Park. The Bureau has delineated approximately 200,000 acres of occupied grizzly bear habitat on these reservations. The 140,000 acres on the Blackfeet Reservation have not been classified, relative to grizzly bear use, to determine management direction of the grizzly. The plan identifies tasks to be performed by the Bureau and the Blackfeet Tribe which would require approximately $120,000 to fund. Results from these studies are necessary to meet requirements of the Endangered Species Act and National Environmental Policy Act for mineral, gas and forestry development on the Reservation, as planned by the Blackfeet Tribe. As necessary, the Bureau plans to meet the requirements from within available resources.

Question: The Central Office budget is $445,000 and 2 FTE's. In addition to the personnel and related costs, what is the balance of funds used for? Provide a breakdown for the record.

Answer: $225,000 of the request is to help pay for the costs of the Portland Fisheries Technical Unit. The FTE for this unit is included under Area Office Field Operations under Tribe/Agency Operations. The balance of the request is for the costs of the two FTE located in Washington, D.C.

Question: $1,062,000 is included for a new line item, Technical Assistance, Fish and Wildlife Service. Provide a breakdown of each of the elements included in this new line item, including both 1986 and 1987 estimates.

Answer: With the proposed increase of $277,000 for the Fish and Wildlife Service (FWS) in FY 1987, the Bureau is requesting a total $1,339,000 for the technical assistance effort. FY 1986 and 1987 funding levels associated with each FWS office covered under this program follow:

Facility	1986 Level	1987 Level
Quinault FH	$ 254,100	$ 284,000
Mescalero FH	202,000	219,000
Williams Creek FH and Alchesay FH	336,900	369,000
NW Fish Health Center	75,800	75,000
Lander TAO	151,200	174,000
Pinetop TAO	86,100	90,000
Parker TAO	40,200	42,000
Vernal TAO	30,100	32,000
Valentine TAO	15,100	16,000
Kalispel TAO	35,600	38,000
Totals	$1,227,100	$1,339,000

The FY 1987 estimate of $1,339,000 is based on preliminary numbers provided by the FWS in 1985, prior to negotiating the FY 1986 level of $1,227,100 in early 1986. The FY 1987 request is the estimated amount needed by the FWS Service to deliver services at the same level as provided in FY 1985.

Question: An increase of $580,000 is requested for the Michigan settlement, for which $700,000 has been provided in the supplemental. Is this total amount required by the settlement? If not, what are the additional amounts that are now or will be required?

Answer: The $580,000 is a requested increase over the $700,000 base level. The FY 1986 supplemental request in not $700,000 but is for $1.5 million to establish a trust fund for the tribes. The court-ordered consent decree governing the Michigan fisheries settlment contains the following language regarding the Federal contribution:

> "43. The Tribes shall have the authority to void this agreement or any portion thereof, upon not less than 60 days prior written notice to the State and the Department of the Interior, unless the following funds and assistance are timely provided by the Department of the Interior:
>
> (a) In fiscal year 1985, $150,000 to be used by the tribes for a study to examine methods to increase the financial return to the tribes and tribal fishery from the marketing of the treaty harvest.
>
> (b) In fiscal year 1985, an additional $180,000 to the tribes for their conservation programs, which include law enforcement, tribal courts and the tribal biological assessment project.
>
> (c) For the assessment of fish stocks available for commercial harvest within treaty ceded waters, an additonal $75,000 to the Fish and Wildlife Service (FWS) during fiscal year 1985.

(d) For the construction, acquisition and/or renovation of a building in Sault Ste. Marie to be utilized for the Treaty Waters Conservation Office, $150,000 to 200,000 by the end of the fiscal year 1986.

If funded, the parties will establish a Treaty Waters Conservation Office to house biologists, enforcement officers, and other personnel involved in management of the commercial fishery in treaty waters and to serve as a central location for information related to the fishery, including catch reports, assessment data, and research. The office will also provide information and assistance to fishermen and others.

(e) As a direct grant to the Tribes $250,000 to be used to implement the recommendations from the study described in paragraph 42(a). Technical assistance to the tribes to assist in implementing the recommendations from the study described in paragraph 43(a). $1,500,000 for the creation of a Treaty Waters Fisheries Managment Fund, which shall not relieve the DOI's existing responsibility for the continued support for tribal programs. Interest from the fund shall be used for fisheries management activities."

Requirements of the consent decree have been met in the FY 1987 President's Budget and FY 1986 supplemental request.

Question: Provide more details as to what the $180,000 for expanded conservation enforcement and $200,000 for establishment of the Treaty Waters Management will be used for, and a breakdown of these costs.

Answer: The three Michigan tribes involved with this program have not as yet developed a detailed plan outlining how the funding will be allocated by activity and tribal effort. Bureau personnel at the Agency level are currently promoting the development of such a plan by the three tribes.

Question: An increase of $277,000 is requested for FWS technical assistance. What is the basis of the increases requested in this item line?

Answer: The FY 1987 estimate of $1,339,000 is based on preliminary numbers provided by the Service in 1985, prior to negotiating the FY 1986 level of $1,227,100 in early 1986. The FY 1987 level was the estimated amount needed by the Service to deliver services at the same level as provided in FY 1985.

Question: Will the amount provided for Williams Creek and Alchesay hatcheries be adequate to operate both facilities?

Answer: The amount was determined by FWS and BIA staff and will be adequate to operate both facilities.

Question: Explain how the amounts included in this line item for Quinault and Mescalero relate to the amounts under fish hatchery operations?

Answer: The amount included for Quinault and Mescalero are for the Fish and Wildlife Service to operate hatcheries for tribal benefit. Tribes receiving fish for these facilities have not as yet developed the capabilities to assume control of these hatcheries. Amounts under fish hatchery operations are for tribes who have developed the necessary capabilities to operate and maintain their own fish hatcheries.

Question: Congress did not agree with the proposed reduction of $347,000 in fish hatchery operations last year; why are you proposing it again?

Answer: The $347,000 reduction is being proposed because it is the result of increases to hatchery programs that have been added in recent years. As it is prorated to all hatchery operations, the $347,000 reduction should result in no severe detrimental effects to any one hatchery.

Minerals and Mining Programs

Question: The request for Minerals and Mining is $7,741,000, a decrease of $100,000. How much of the special projects funding in FY 1986 and 1987 will be used for expenses related to participation in the Secretary's Task Force on royalty management? What is the nature of these expenses?

Answer: The original estimate for FY 1986 for these expenses was $250,000. At present, it is estimated at about $200,000. These costs include per diem, travel, supplies, materials, and other direct operating expenses, as well as reimbursements to other agencies for services in connection with improving the oil and gas royalty management/payment efforts including ADP services. The estimate for expenses of the Task Force in FY 1987 may be less, since it is anticipated that the time involved for participation of the two employees detailed to Colorado may be shortened.

Question: The base includes $468,000 for 16 positions established as a result of the Linowes Commission recommendations. Are all 16 positions filled? Where are they located?

Answer: The 16 Linowes positions were distributed as follows: one each to area offices in Aberdeen, Albuquerque, Anadarko, Billings, and Phoenix; five to the Central Office; and six to the Osage Agency. Two of the Osage positions are currently vacant.

Question: What types of positions are these?

Answer: The types of positions established as a result of the Linowes Commission recommendations were as follows: Petroleum Engineer, Geologist, Petroleum Engineer Technician, Computer Specialist, Cartographer Technician, Realty Specialist, and Financial Specialist.

Question: You are proposing a decrease of $960,00 in minerals inventories in 1987. What assessments will be affected by this decrease?

Answer: We cannot identify specifically the individual assessments that may be affected, since the final determination for use of available funds in FY 1987 will depend in part on the accomplishments and findings from on-going efforts by Geological Survey (USGS), Bureau of Mines (BOM), and tribes under current projects. The proposed distribution of funds for FY 1987 in the justifications shows decreases for about nine reservations, but there are also increases in others.

When the final 1987 appropriation amount is determined, the funds will be utilized in the most effective manner, in consultation with tribes, USGS and BOM to meet these requests.

Question: Why are you estimating no tribal projects in FY 1987? Are the tribes allowed to contract to carry out the assessments?

Answer: At the time the FY 1987 budget was being prepared, we had no requests to fund tribal projects. Since that time, four tribes have made verbal requests for project funding in 1987. The final requests will be reviewed further. Viable tribal proposals may be funded and USGS and BOM funding reduced.

Question: An increase of $960,000 is requested for special projects. What specific corrective actions will you take with these funds to resolve royalty payment problems, and integrated records management?

Answer: A major Integrated Records Management System (IRMS) effort is being undertaken, addressing three critical problem areas. One of these is the oil and gas royalty management/payment difficulties that have plagued the Bureau and the Department for some time. The number one priority of the effort is to deal with subsurface leases and the problems of managing oil and gas revenues. An Implementation Plan was signed by the Assistant Secretary - Indian Affairs on April 22, 1986. The project will be managed by the Deputy to the Assistant Secretary for Trust and Economic Development. It involves Trust and Economic Development staff as well as the Offices of Administration and Data Systems, all Area Offices, and the Departmental oil and gas steering committee. Actions include: training in computer and software requirements, hardware/software development, data development/input and maintenance and administrative support. Discrete elements of the overall system can be brought up and start producing benefits before the total system is completed.

Question: A decrease of $100,000 is proposed, to delete the add-on for Hopi coal lease negotiations. How are these funds being used in FY 1986?

Answer: These funds were provided to the Hopi Tribe to assist them in efforts to renegotiate royalities on a long-term coal lease with Peabody Coal Company.

Question: Are the negotiations continuing? Is the Navajo Tribe involved?

Answer: Yes, negotiations are continuing. The next meeting between the Hopi Tribe and Peabody Coal Company is scheduled for May 23-30.

The Navajo and Hopi have held discussions about the negotiations but the Navajo have not participated directly in the negotiations with Peabody Coal Company.

Question: Won't additional funding be needed to allow both tribes to continue to press Peabody Coal to renegotiate the lease?

Answer: At this time the need for additional funding cannot be assessed. If the negotiations go well, the present funding should be sufficient.

Question: What assistance is the Bureau prepared to offer in this effort, or has offered?

Answer: The Division of Energy and Minerals has access to an economic evaluation assistance computer program. This program can be performed on existing and proposed mineral leases, profit sharing agreements, or other types of contracts involving Indian-owned minerals. The purpose of such assistance is to provide the tribes with a level of information concerning the economic consequences of such agreements so as to enhance their negotiating and managerial position relating to mineral development in the future.

Irrigation Operations and Maintenance

Question: The request for irrigation O&M is $7,587,000, a decrease of $353,000. Why is 1982 crop year data the latest information available in support of this program? What are you doing to gather and provide more current information?

Answer: When the FY 1987 budget data was being assembled in March 1985, the 1982 crop year data was the latest information available. BIA and USDA crop year informaton is 16-18 months behind. We have rescheduled our reporting for the Natural Resource Information System so that field data can be received and encoded at an earlier date. At the present time, we have 1984 data available for the FY 1988 budget development.

Question: Do you have information yet on the amount produced from the investment program for all of FY 1985? If so, what was the total?

Answer: Yes, the information is available and the totals for FY 1985 for irrigation and power are as follows:

	Avg Cash Balance - 12 Months	Interest Earned - 12 Months
Total Irrigation	$15,912,878	$1,577,825
Total Power	15,675,420	1,565,059
Totals	$31,588,298	$3,142,884

Question: What is the impact of reducing funding for Category 3 projects (-$310,000) and the Navajo Indian Irrigation project (-$369,000)?

Answer: In terms of repair and/or replacement of the small field structures required for water delivery the reduction means repair and/or replacement will occur only if not to do so would prohibit water delivery. As with Navajo, the maintenance and repair of canals, laterals and small field structures will not be done to the extent available resources are needed for salaries and energy requirements.

Question: What is the basis for expecting increased interest earnings in 1987? What is your estimate of the increased funds that will be available to you from this source?

Answer: The investment has gone through two full cycles now and in both cases increases were realized. The Bureau feels confident the program managers will continue to show increases as the program continues to grow. Also, we expect the irrigation and power collections (investment monies) to increase. The estimated increase in interest earnings is between $500,000 and $700,000. However, our original estimate was made before the recent downward trend in interest rates.

Indian Rights Protection Programs

Question: The request for Indian rights protection is $17,408,000, a decrease of $5,087,000 from the base. Included is an increase of $100,000 for archeological clearances, and a decrease of $315,000 for hazardous waste surveys. What is the basis for the need for archeological services in Oklahoma? What are the other projects, other than oil and gas leases, requiring such services?

Answer: Anadarko and Muskogee areas carry out a wide range of services for Indian and Indian trust lands. Activities other than oil and gas include homesite inspections, road construction, forestry, business leases and agricultural leases. All of these actions require archeological surveys. In addition, even though BLM has been very cooperative in helping the Bureau meet its requirements on oil and gas leasing, if a conflict in workload arises, the BLM project will be handled first, which could lead to project delays for some BIA actions.

Question: Explain what is meant by the 20 Bureau archeologists "needing guidance" in granting the tribes maximum authority? How much money is required for this effort, and how exactly will it be used?

Answer: Because the National Historic Preservation Act (NHPA) in particular and other archeological laws in general are not explicit in discussing Indian issues, much guidance is needed from the Central Office, especially in cases where the tribes are wishing to conduct their own archeological programs. BIA has been active in the revision of section 106 of the NHPA to ensure the tribes maximum particpation where desired, while reducing state participation to a minimum.

The amount of funding necessary will be approximately $50,000. This amount will be used to develop clearances for projects with limited resources.

Question: What is the status of the hazardous waste survey effort, for which Congress added the $315,000 in FY 1986? When do you expect to have firm information as to the extent of the problem, and the sites requiring priority attention?

Answer: A competitive contract will be issued during FY 1986 to perform preliminary assessments and site investigations on 15 hazardous wate sites located on 7 Indian reservations. Results from these evaluations will become available during the first quarter of FY 1987.

Question: Do you know at this point of any sites that require cleanup, and what the estimated costs are? If so, what are they?

Answer: We do not know at this time, how many sites will require cleanup. A number of hazardous waste sites under evaluation during FY 1986 will require extensive efforts to define the nature and extent of the problems. Five reservation sites are on the EPA National Priorities List (NPL) and are actively being addressed by the EPA.

Question: What will be the source of funds for the cleanups that are required? Do you expect to undertake any in FY 1987?

Answer: Presently, we have not included funds for cleanup of hazardous waste sites. Identification of sites needing cleanup will depend upon the results of FY 1986-87 evaluations. Emergency sites will be cleaned up with funds from available sources.

Question: Do you need any additional funds to continue the survey effort in FY 1987?

Answer: The Bureau plans to survey additional new sites and perform further evaluation of sites identified during FY 1986-87 contract surveys. When the results of the 1986 surveys are known, we should have a better indication of what other surveys may be needed.

Question: A decrease of $700,000 is proposed for ANILCA programs, leaving $672,000. How will the balance of funds be used?

Answer: The fund will be used for titles and record work necessary to track Native allotment adjudication and ownership; to supplement appraisal and archeological services where necessary to carry out the Secretary's responsibility to Native allotments under Section 205 of ANILCA; and to provide for one centralized real estate investigation and assistance team to clear up "window" areas in conjunction with and (prior to survey) as a part of BLM's Patent Plan Process (PPP).

Question: What is the total amount of claims under this program that need to be dealt with? In addition to the cadastral survey funds, what other rights protection funds would you propose to use to supply these funds?

Answer: Approximately 2,000 parcels remain to be ajudicated. No additional funds should be necessary from other rights protection funds except some joint funding and sharing with the ANCSA Office and BLM.

Question: On what basis do you expect the State or various Native organizations will provide funding for this effort? Have they in the past? What if they do not?

Answer: Both State and Native corporations stand to gain (by getting clear, full title) by completing the adjudication of Native Allotment inholdings (determining exact location and validity). There has been some limited interest shown by the State and Native corporations in assisting to eliminate duplication and coordinating field work. If they do not help, less parcels will be adjudicated each year; therefore, it will take longer to complete the project.

Question: A reduction of $1,568,000 is proposed for ANSCA cemetery/historic sites. Will the delay of five years in completing this effort have any negative impact?

Answer: A delay will increase the time that the corporations have to wait for determinations of eligibility and for redistribution of annual savings via Section 14(h)8 of ANCSA. Final acreages are dependent on the Bureau of Land Management (BLM) surveying which is currently scheduled to take 40 years. Furthermore, BLM has gone to the patent plan process, which means they complete one area at a time. Our investigative work only needs to stay ahead of those "windows" of adjudication and survey. Thus, any actual negative impact is not due to this proposed reduction but rather to the time it will take BLM to complete the surveys.

Question: What tribe/agency funds will be used to continue this effort in FY 1987? In what amount?

Answer: $732,500 of rights protection tribe/agency funds (placed in tribe/agency in 1987) is specifically for this purpose.

Question: A reduction of $1,020,000 is proposed to litigation support. This represents the add-on in 1986 to enable the Bureau and tribes to meet court-ordered deadlines in rights cases. Will all the court-ordered deadlines identified last year be met? What deadlines are you facing in FY 1987? Will you be able to meet them at the funding level proposed?

Answer: Yes, court ordered deadlines will be met. A number of deadlines have been lifted pending negotiations on the claims. Deadlines for in FY 1987 which will be met under the proposed funding are:

1. U.S. v. Abousleman (1st quarter)
2. U.S. v. Bluewater Toltect Irrigation District (4th quarter)
3. Montana General Stream Adjudications (2nd quarter)
4. Washington v. Acquavella (1st quarter)

Question: Have you been able to provide funding for all the requests submitted to you in FY 1986? If not, how many have been denied solely for lack of funds? Do you anticipate any shortfalls for the remainder of this year?

Answer: Yes, the Bureau has been able to meet funding requests for litigation support in the context of water litigation/negotiations due to coordinated scheduling of data collection activities as they are anticipated and required. At this time we anticipate no shortfalls in FY 1986.

Question: What is the likelihood of shortfalls in providing requested funds in FY 1987 if the proposed reduction is agreed to?

Answer: The likelihood of shortfalls in FY 1987 is considered unlikely since water resources personnel have been advised of the transfer of funds from the Water Mangement and Development line item to the Litigation and Negotiation line item and they have planned expenditures in accordance with the demands made upon those funds by anticipated needs.

Question: The committee has been informed that on the Wind River Reservation, in the Big Horn River adjudication, the tribes are negotiating but are paying both attorneys' fees and expert witness fees. If this were in litigation, wouldn't BIA pay such fees? Why aren't they eligible for payment in a negotiation?

Answer: In the context of this case, no. The case originated approximately 8 years ago. The case began with the U.S. preparing for the presentaton of the tribal claim by the Department of Justice. In the early stages of preparation, the tribe alleged that the U.S. preparation for litigation was inadequate and the tribe sought funding for private attorneys and expert witnesses. The U.S. declines to pay such costs because it was determined that the preparation and representation would result in a duplication of effort. The tribe subsequently hired its own attorney and expert witness using its own funds and in fact presented its case at the same time as the U.S. and Wyoming presented their cases. Similarly and under the same circumstances, the U.S. would decline to provide funding for negotiations.

Question: Is it true you will not let the Tribes purchase for negotiation purposes the services of experts retained by the U.S. for the litigation part of the dispute? How does this policy promote negotiated water settlements, in lieu of litigation?

Answer: It is true. However, the experts now sought by the tribe are the same experts which participated in the litigation. In view of this fact, the U.S. will continue to utilize the same expert services and share the data collected with the tribe for its purposes in conducting negotiations.

Question: Have you had to deny any requests for funds in FY 1986 due to the lack of funds? Will you be able to use all of the funds appropriated?

Answer: In FY 1986 we have not had to deny any requests for attorney fees due to lack of funds. We anticipate utilizing all available attorney fee funds in FY 1986.

Question: A reduction of $350,000 is proposed for attorney fees. Has the limitation on funds for the Navajo/Hopi attorneys caused any problems?

Answer: P.L. 96-305 authorizes appropriations to pay $160,000 per year to each tribe until such litigation or court action is finally completed. (The amounts started at $120,000 per year and rose $10,000 per year until the annual limit of $160,000 was reached.) P.L. 93-531 authorizes the Secretary to pay any or all appropriate legal fees, court costs, and other related expenses arising out of or in connection with the commencing or defending against any action brought by the

Navajo or Hopi Tribe. Two years ago, when the Congress asked the Bureau about a limitation on the amount of fees to be paid, the response indicated an estimate of $900,000 per year. The limit that we are presently maintaining is $700,000 per year, total for both tribes, for both statutes.

It is the position of the tribes that the Government should pay all of these expenses. Lack of funds in the past, and now the limitation placed on fees, has limited payments to the tribes and required the tribes to either pay for some of the expenses or limit services. The tribes have submitted requests for reimbursement of their unpaid costs which total approximately $1.1 million covering 1981 through the majority of 1985.

Real Estate and Financial Trust Services

Question: The request for real estate/financial trust services is $12,851,000, an increase of $4,589,000 from the base. The Juneau Area Office is requesting an increase of $116,000 and 2 FTE's. What is the basis for this increase in staff, given the overall decrease in activities in Alaska proposed in the budget?

Answer: This is not an actual increase in staff. The amount should have been shown as a base transfer. The two FTE's are the Division of Trust Services director and a secretary which were previously shown elsewhere and were budgeted by charging costs to all the programs in the Division. During the FY 1987 budget planning process base funds were placed in this line item to show direct funding for these two positions. The funds will be used for salaries and related costs.

Question: An increase of $500,000 is requested for the cadastral survey program in the lower 48 states. Where will the additional project office be located? How much of the increase is for the office, and how much will be used for the additional survey team on the Navajo Reservation?

Answer: As of this date, the exact location of the new project office is not known. Based on requests on hand, it will likely be under the jurisdiction of either the Albuquerque or Portland Area Office. Approximately $100,000 of the proposed increase will be used for the new project office. Approximately $50,000 of the increase would be directed to the additional survey crew on the Navajo Reservation.

Question: An increase of $2,538,000 is requested for Alaska cadastral surveys. The BLM budget for cadastral surveys in Alaska is reduced by $4.0 million in FY 1987. If the BLM budget were maintained at the 1986 level, would this increase in BIA be necessary? Explain.

Answer: Yes. The increase would still be necessary even if BLM's Alaska survey budget remains at the FY 1986 level. The extent of the backlog of required surveys in Alaska is presently estimated at 4,900 requests with 2,500/3,000 to be added when BLM's adjudication process is completed. This backlog will reduced by approximately 200 under the Bureau proposed funding. Furthermore, BLM has other survey clients (Forest Service, State of Alaska, etc.) with priority needs. Given this intense competition for BLM time and funding, increased funding for BIA represents the only sure way of securing the required surveys for priority development on native allotment lands within a reasonable timeframe.

Question: Will BLM accomplish all of the work proposed including the pre-survey work for which $700,000 is requested? If not, who else will be involved, since no additional FTE's are included in the request?

Answer: The $700,000 for pre-survey technical assistance will be: (1) contracted to qualified P.L. 93-638 native contractors; and (2) accomplished by BIA in-house capacity, again as circumstances demand and in proportions yet to be determined. While FTE from previously-funded ANILCA programs will be available, it is anticipated that the major portion of the $700,000 will be contracted via the first alternative.

Question: When would you expect to have the MOA with BLM completed?

Answer: We anticipate that the MOA will be drafted during the third quarter of FY 1986 and finalized prior to commencement of FY 1987.

Question: An increase of $718,000 is requested for land records management. What is involved in the systems modernization effort to streamline royalty management and management information systems?

Answer: The systems modernization effort started with the establishment of the Configuration Management Committee. This group identified the numerous systems in use in the Bureau, held meetings to assemble a comprehensive inventory and understanding of existing systems, analyzed the capabilities of these conditions to support the desired future system uses, and synthesized the analysis to meet current and future needs. Actions will include: training in computer and software requirements, hardware/software developments, data development/ input and maintenance, and administrative support. Discrete elements of the overall system can be brought up and start producing benefits before the total system is completed. A Technical Assistance Group has been formed and most of the members have already received the training needed for them to assist the 12 Bureau Areas in implementing the Integrated Records Management System (IRMS). All modules of the IRMS will be addressed in this major Bureau effort. Those include: Individual Indian Money, Leases, Ownership, People, and the Royalty Distribution System. Priority number one is to address subsurface leases.

Question: Describe what the Configuration Management Committee is and what will it do?

Answer: The Configuration Management Committee was formed to assess current status and make recommendations to the Deputy to the Assistant Secretary - Indian Affairs (Trust and Economic Development) on the integration of the various management information systems in use.

The Committee provided recommendations and procedures for institutionalizing an integrated systems approach. This effort was the ground work for the Integrated Records Management System (IRMS) Implementation Plan which was approved by the Assistant Secretary on April 22, 1986. Efforts of the members with regard to the implementation of an integrated records management system in the Bureau are assigned as collateral duties.

Question: The request for financial trust services is $1,177,000, an increase of $450,000. What do you have in mind with regard to the contract for the investment function?

Answer: The contractual services for the investment function are included in the request for proposals currently being offered by the Financial Management Service of the Treasury Department on behalf of the Bureau. The offer is limited to the Treasury Lockbox Network Banks. The Bureau will receive lockbox services, investment management services, and custodial services under the contract.

Question: Who is developing the system for trust fund accounting? What were the development costs, and the source of funds?

Answer: A separate internal trust fund accounting system has not been developed. At the time it was planned, the possibility of obtaining accounting services from an outside source was being explored. Under the contract described above, the selected lockbox depositary will provide accounting for receipts, payments, expenses, and income; account status; settlement of transactions; and customer service for the trust accounts. There will be no direct development costs. The costs for the contracted service will be paid from the requested funding through a memorandum of understanding with Financial Management Services and the third party contractor.

Facilities Management

Question: The request for facilities management is $88,597,000, a decrease of $1,133,000. Included is a decrease of $1,548,000 for existing facilities O&M. What is the basis for the estimate of $300,000 savings due to demolitions? When will the survey to identify all abandoned buildings be completed?

Answer: The $300,000 represents a decrease in the Existing Facilities O&M program due to projected savings from the demolition of unneeded facilities not worth repairing. There is a corresponding increase for demolitions management in the Construction Management account. The intention is to handle demolitions under contract similar to other construction supervision and boiler inspection programs which are also under Construction Management. The proposed separation of funding from the Facilities Management and Facility Improvement and Repair programs is intended to clearly underscore the importance of this program. The program will lead to the disposal of numerous boarded-up buildings which present a hazard to children and others. A survey of space which could be demolished and/or transferred was conducted and a report completed in December 1985. Recently this report was reviewed and short-term and long-term goals for demolition and transfer were established on March 31, 1986.

Question: What will be the criteria for deciding whether to demolish such buildings, or to retain them for other uses?

Answer: In accordance with the BIA Manual, decisions to demolish or transfer buildings no longer needed by the Bureau, are based on the condition of the building. If the building is in sound condition, and not needed by the Bureau, it is offered to the tribe. If not, it is demolished.

Question: Is the entire reduction of $1,248,000 in Alaska solely related to no longer retaining warehouses to Nome and Bethel? Were these facilities leased or owned? If leased, what were the annual costs for each?

Answer: The proposed reduction of $1,248,000 will eliminate the Facilities O&M program in Alaska. At present, these funds are used to support the facilities related costs for maintenance, repairs, and utilities for the Bureau's office and quarters site in Bethel, Alaska, and the quarters and small storage facility in Nome, Alaska. Ten buildings including the warehouse, a shop, some office space and quarters were leased in Nome. Office space is also leased in Anchorage. The annual lease cost for these facilities is approximately $111,000.

Question: What are the specific reductions at the Bethel and Nome agencies referred to in the budget? What types of positions do the 7 FTE's proposed for reduction represent?

Answer: The Bethel Agency facilities operation, maintenance and repair reduction is $952,800. This includes 6 FTE's. The Nome Agency facilities, operation, maintenance and repair reduction is $191,200. This includes 1 FTE. The positions are: a maintenance man in Nome; maintenance workers, utility system repair operator, and custodial workers in Bethel.

Question: An increase of $415,000 is requested for new facilities O&M. Are the estimates in the budget as to when the new facilities will start operation still valid? If not, provide the changes, and related cost differences, for the record.

Answer: The estimates as to when the new facilities will start operations are still valid but the cost estimates are not. Hopi High School alone will require approximately $485,000 per year which exceeds the amount budgeted for new facilities O&M. Any shortfall in this category will be covered out of O&M for existing facilities.

Management and Administration

Question: The request for management and administration is $31,530,000, an increase of $1,048,000 over the base. An increase of $106,000 is requested to fully fund central office staff, which have had to rely on funding from other Bureau offices in the past. Why haven't you identified this underfunding in the past?

Answer: The funding requirements have been identified in the past and actions have been taken to reduce cost. However, FY 1986 Congressional action reduced this account by $102,000 for the Public Information office and also imposed a funding level of $270,000 for Congressional and Legislative Affairs which was above the amount originally budgeted for that office. This action created deficits in the Office of Public Information, Bureau Controlled Correspondence, and Equal Employment Opportunity which hampered operations. Therefore, $106,000 is requested to provide funding for minimum operations.

Question: What other sources of funds have been used?

Answer: Funds were made available from other Central office staff operations under Management and Administration by lapsing unfilled positions and curtailing travel and equipment acquisition.

Question: Provide a breakdown of each of the offices funded under this line item, including staffing and costs.

Answer: The information is as follows:

	FTE	$000
Congressional & Legislative Affairs	5	270.0
Office of Public Information	5	189.3
Bureau Controlled Correspondence	5	150.0
Office of Equal Employment Opportunity	5	253.7
Total	20	863.0

Question: An increase of $748,000 is requested for administrative services. Included is $166,000 for a contract management system. Describe the system you will use, which was developed by the Park Service. What modifications will be made to it?

Answer: The Automatic Procurement Data System (APDS) allows the Bureau to issue contract solicitations, awards and modifications, in a standard format, incorporating all applicable contract clauses, and issues the documents in a more timely manner. This system originally was developed for the Energy Department. The National Park Service bought into it and we have, in turn, worked with the Park Service to implement it within the Bureau. The APDS system also allows for the ability to provide specific data elements of a contract award/modification which are required by the Interior Procurement Data System (IPDS). This aspect eliminates the need for a manual tracking system of actions and dollars obligated; type of contract award; award authority; type of business receiving the contract; and other elements related to a contract award/modification.

Modifications to the APDS system will include the capability to:

a) increase the speed of the program output;

b) to put the general contract provisions (clauses) directly on the hard disk rather than maintain floppies;

c) incorporate into the system those contract provisions which are specific to P.L. 93-638 contract awards, a major portion of Bureau procurement work-load;

d) generate questions which will retrieve/include clauses/requirements specific to the Buy Indian Act and will not interfere with the Small Business/Labor Surplus Area Set-aside program; and

e) purchase an office designation numbering system to conform to the Interior Procurement Data System (IPDS).

Question: How specifically will the $166,000 be used?

Answer: Funds will be used to hire a GS-11/12 Procurement Analyst with a background in ADP systems and systems analysis; for continued management systems development; software programming and enhancements; onsite training and technical assistance to 14 procurement offices; and refinement of internal control procedures to track contract plans with awards, payments, and contractor performance. The volume of Bureau legal instruments (almost half the annual budget) requires an efficient and effective management of information/data systems. Manual tracking is not an appropriate control mechanism.

Specific projects that will be started, to the extent funds are sufficient include:

a) the networking of personal computers located at the 14 Area/Central contract offices with a Time Sharing Program (TSP) contractor, for the purpose of central storage, query and analysis;

b) developing an integrated Management Information System (MIS) to build on work already begun by the Area Offices, which will incorporate (to the extent feasible) established programs developed for the Air Force Systems Command (AFSC) and the Environmental Protection Agency (EPA) to provide a methodology for tracking a procurement from the inception of a procurement request to contract close-out;

c) establishing a computer data-base for:

   1) eligible Indian/Alaska Native Contractors certified under the Buy Indian Act,
   2) warranted Contracting Officers,
   3) an audit tracking system for procurement-related matters, and
   4) an internal Control Reviews for procurement issues;

d) develop a network of Bureau Agency Office small computers (to be procured by the Bureau's Office of Indian Education Programs) with Area/Central Office small computers to track small purchases; and

e) developing an interface system with the Bureau's Finance System that will track obligations, contract payments, debt collections, and Prompt Payment Act compliance.

Question: An increase of $332,000 is requested for intra-governmental billings. What is the basis for the estimated increases in FTS and postage?

Answer: FTS costs have been on a constant rise. In FY 1985, the Bureau's FTS cost was $3,219,054. In FY 1986, we have available $2,900,000; however, our most recent estimate from the Department is $3,227,652.

In FY 1985, actual postage cost was $2,549,777. Postage for FY 1986 is estimated at $2,800,000. We expect similar increases in FY 1987.

Question: Why have Departmental billings increased so much (+14%)?

Answer: The Department billings for FY 1985, 1986, and 1987 (estimates) are provided below by category.

	1985	1986	1987
Printing/publication	$ 25,300	$ 26,500	$ 27,100
General services	51,500	47,900	48,800
Space	17,200	17,700	18,000
Security	48,700	47,700	48,000
Working Capital Fund Directory	7,000	7,000	7,000
Computer Telephone Management	10,000	26,400	27,500
Medical & Health	22,300	21,800	21,800
Health Services Unit	16,000	12,900	12,900
Department Development Center	68,000	85,000	82,700
EEO	75,100	97,200	97,200
Information Technology Center	20,500	22,900	21,900
Fiscal Services	11,600	12,200	12,100
Personnel Services	10,900	10,800	10,900
Consolidated Mailroom	16,900	85,400	87,600
Denver Learning Center	--	200	200
Department Broadcast Center	--	6,200	5,500
Allex Base	--	5,700	5,700
TOTAL	$401,000	$533,500	$534,900

Departmental assessments increased from $401,000 in FY 1985 to an estimated $533,500 in FY 1986 -- a total estimated increase of 132,5000. A major increase was in Consolidated Mail Operations -- from 16,900 in FY 1985 to $85,400 in FY 1986, for a total $68,500 increase. In FY 1986, assessments were initially made for three new programs (Denver Learning Center, Departmental Broadcasting Center, and Allex Base) in the total amount of $12,100. The estimated FY 1987 Departmental assessments continues the FY 1986 assessment level and allows a 1% increase for anticipated overall cost increases.

Question: $123,000 is requested for financial management. What do you mean by saying the increase will "allow a higher degree of specialization"?

Answer: The increase will be used to provide intensive training for the current staff. It will allow establishing an understudy position for the Bureau Budget Officer position since the incumbent intends to retire in FY 1988; and, will also allow hiring additional analysts who can provide a higher degree of expertise in fund control and program analysis activities.

Question: In addition to personnel costs for the 3 additional FTE's, what other cost increases are included?

Answer: Other costs include associated training costs such as travel and tuition.

Question: An increase of $330,000 is requested for the financial accounting system. Who developed the commitment accounting system which will be implemented with these funds? At what cost, and with what source of funds?

Answer: The requirements and specifications for the commitment accounting system were developed by the Bureau's Office of Financial Management. The Office of Data Systems is currently evaluating this package and will identify the estimated cost and sources of funding for development. Hardware and software costs will be absorbed by the Office of Data Systems funding. All pre-and post-ADP costs will be absorbed within the $330,000 requested to improve the Financial Accounting System. The pre-costs were primarily covered in FY 1986. The post-ADP costs will be used for bureauwide training and development of manuals and handbooks for the users of the Commitment System.

Question: How exactly will the increase of $330,000 be used?

Answer: Part of the increase will be used for implementing the Commitment system. Depending on the scheduled implementation of a Departmental Accounting System, the remainder of the increase will be used as follows:

1) If the Bureau is scheduled to implement early, the FY 1987 funding will be used to pay for equipment, training, and other related costs for implementing the new system.

2) If the Bureau is scheduled for late implementation, the funding will be used to continue to correct the control weaknesses, provide oversight at field locations to assure that previously implemented corrective actions are being maintained, and continue current system maintenance until the new system is in place.

Automatic Data Processing Services

Question: The request for automatic data processing services is $17,651,000, a decrease of $992,000. Last year, a limitation on ADP spending was placed in the bill, based on reports the Bureau was still charging other programs for ADP costs. What have you done to ensure all ADP costs are specifically identified, and no other funds will be used or charged for ADP costs?

Answer: The following fund control processes have been established to ensure proper ADP budgeting and cost accounting and will ensure that only funds allocated will be used for direct ADP costs:

a) A new allotment and fund distribution process whereby ADP funds are alloted to the Deputy to the Assistant Secretary - Indian Affairs (Operations) and are then distributed by Fund Distribution Document to the Director, Office of Data Systems (ODS);

b) A Financial Program Plan (FPP) for all ODS components is prepared identifying ADP budget categories by object class. This FPP is revised quarterly within ODS and is submitted to and reviewed by the Deputy to the Assistant Secretary annually as the basis for fund distribution;

c) An automated budget spreadsheet is updated monthly showing planned and actual ADP costs;

d) The budget spreadsheet is reviewed monthly by the Director of ODS;

e) The budget and funding availability is reviewed quarterly by the Director of ODS and all senior ODS administrators;

f) Memoranda of Agreement are being developed with other Central Office Directors for joint oversight and periodic reviews of ADP funds for systems administered by their programs;

g) A review and approval process and data base are in place to monitor indirect ADP expenditures via 638 contract funding; and

h) Guidance about what is, and what is not, a direct ADP cost has been promulgated for area and agency administrators who are using the Indian Priority System (IPS) for budget preparation. All costs associated with data processing will be funded by ODS. Costs incurred by pre- and post-data processing activities will be funded by the programs they involve.

Question: What is the current status of staffing the Office of Data Systems?

Answer: Present on-board strength: 108 persons; positions advertised and remaining to be filled: 23.

Question: When do you plan to report to the Committee on indirect ADP expenditures?

Answer: We continue to interpret "indirect ADP expenditures" to mean expenditures for ADP equipment procured with P.L. 93-638 contract funds. Listed below is equipment procured since ODS review and approval of such procurement began.

ADP Equipment Purchased or Leased with P.L. 93-638 Funds
1984 to present

CONTRACTOR	EQUIPMENT	COST	PURPOSE
Chehalis Tribe	AJ831 Terminal Extel Comwriter Terminal	$1,238 480 40	Access Univ. Wash. fisheries database
Squaxin Island Tribal Council	DEC Rainbow	2,300	EasyLink to communications with other tribes on fish regulation changes
Skagit System Coop.	Lease-to-purchase 2 Eagles	1,100 125	Word processing, data analysis, budget, finance
Kodiak Area Native Assoc.	Toshiba T-300	9,661	Job bank, employment skills inventory
Columbia River Inter-tribal Fish Commission	2 microcomputers	30,000 2,000	Word Processing, data processing, communications between tribes
Chickaloon Moose Creek Native Assoc.	Olivette ETV 300 Word processor	2,796	Word processing

CONTRACTOR	EQUIPMENT	COST	PURPOSE
Crow Creek Sioux	Apple IIe	1,723	Update record keeping
Tulalip Tribes Fisheries Dept.	4042 A Terminal, 4611 PLotter Modem	11,855	Access Univ. Wash., Cyber database building, data processing, data entry
Standing Rock Sioux Tribe	Radio Shack 16-B	9,888	Economic Dev. operations center, data processing
Cow Creek Band of Umpqua Tribe	IBM PC-XT	20,000	Land use, mailing lists tribal needs assessments, database, bookkeeping
Quinault Tribal Council	NEC 3530 Printer	1,690 384	Equipment upgrade, Access Univ. Wash., tribal communications, fish counts
Confederated Tribes & Bands Yakima Indian Nation	HP 150 microcomputer HP 9133 disc., C. Itoh F10 Printer	10,313	Word processing soil survey, data processing
Cherokee Nation	Brother HR-25,	4,800	Word processing system
	CRT Terminal, Disc.	1,200 500	
Ramah Navajo Sch. Board, Inc.	TI Desktop Professional Word Processor TI portable with software	6,926 2,926	Word Processing
Santee-Sioux Tribal Council	MBC 1250 microcomputer	5,215	Core sample management
Skagit Tribe Portland	Microcomputer	8,217	Fisheries management
Miccosukee Tribe Eastern Area	IBM PC	3,000	Tribal accounting
Poarch Band of Creek	Microcomputer & software	26,600	Core sample management
Oglala Sioux	2 IBM PC-XT microcomputers	12,486	Natural Resources management
Crow Creek Sioux Tribe	Apple IIe microcomputer	4,030	Finance
Rosebud	CPT	15,271	Natural resources development

CONTRACTOR	EQUIPMENT	COST	PURPOSE
Chippewa Sioux	Apple IIe microcomputer	23,090	Tribal needs assessment
Shoshone Paiute	Burroughs B-26 microcomputer	8,910	Tribal enrollment
Jicarilla Apache	IBM PC-XT	4,500	High education
Puget Sound	Unknown (model unspecified)	8,217	Fisheries management
Colville Business Council	Apple IIe	1,411	Forestry Management
TOTAL		$242,959	

NOTE regarding Navajo Tribe: There has been no expenditure of 638 funds for ADP in the Navajo Area since 1982. On August 4, 1982, Grant No. 9431 was awarded to Wolf & Assoc. in the amount of $128,616 for computer programming of a law enforcement system. This programming was sucessfully completed. No computer hardware or other ADP products or services were included in this grant. ADP products and services obtained by the Navajo Tribe are obtained with private (non-Federal) funds.

Question: $300,000 is requested for small computer pilot projects. What is the purpose of this effort?

Answer: The purpose of small computer pilot projects is to establish complete microcomputer systems including microprocessors, printers, disks, and modems to support particular software development efforts where a local computer application shows promise for eventual use on a nationwide basis. Such demonstration projects will be pilot tested first in area and agency locations and later standardized for nationwide use.

Question: What is the expected follow-on?

Answer: No follow-on procurement is anticipated.

Question: How many small computers are currently being used in the Bureau for the purpose listed (data processing, word processing, data base management, and electronic spreadsheeting)? Why is a new pilot project necessary?

Answer: Approximately 180 small computers are in use; not including those in the schools use for computer-aided-instruction. It is a common industry practice to establish pilot projects to evaluate productivity improvements resulting from the use of microcomputers. Because of past unsatisfactory Bureau experience, we believe that it is desirable and prudent that the effectiveness of a microcomputer application be proven in a pilot test environment before going nationwide with wider use. Many of the originators of new small computer projects are would-be computer users who are currently performing manual operations in an outmoded manner. They recommend innovative methods for microprocessing that would increase their productivity and the productivity of those engaged in similar administrative and program functions in other areas and agencies.

Construction Management

Question: An increase of $500,000 is requested for construction management. How often are facility safety inspections now carried out, and how will that change if the $200,000 increase for that purpose is provided?

Answer: The Bureau is inspecting, on an annual basis, approximately 20% of its school facilities. With the requested $200,000 increase, it is estimated that all schools and some administrative facilities can be inspected each year.

Question: What is the basis of $200,000 for this purpose?

Answer: The $200,000 will be used for on-site inspections, testing and will enable the Bureau to inspect all schools and some administrative facilities on an annual basis.

Question: Why have you decided this is necessary? Are we missing life safety problems that we should be taking care of?

Answer: The Bureau is committed to comply with 25 U.S.C. 2005 A&B which mandates compliance with national consensus codes at all school facilities and the subsequent plan to correct identified deficiencies. The Bureau cannot be sure it is identifying and correcting all life safety problems because it has not conducted inspections of all school facilities. However, the proposed increase of $200,000 will permit the Bureau to identify life safety deficiencies at all schools so that corrective action can be taken on a timely basis.

Question: Why is the $300,000 for demolition work included here rather than in the construction program? Isn't demolition already accomplished as part of the FI&R program? How much was spent on demolition in the past two years?

Answer: Yes, demolition is accomplished as part of the FI&R program. However, this funding would allow for the centralized planning and management of demolitions where needed even if an FI&R project is not required (e.g., demolition of small buildings using on-board facilities operations and maintenance staff).

Demolition in conjunction with the FI&R program totaled $65,500 in FY 1985 and $40,600 in FY 1986.

Question: How exactly will this $300,000 be used?

Answer: The $300,000 requested will be used for the planning and management of short-term demolition goals identified for FY 1987. It is planned to accomplish this program under contract to the extent possible.

Consolidated Training Program

Question: An increase of $1,350,000 is requested for a new consolidated training program. What is the status of the action plan, which you planned to complete by May 1986?

Answer: The action plan for the "Consolidated Training Program" was completed in April 1986 and has been provided for the Committee's use.

Question: How many people do you estimate you will be able to train with the funds requested? How many years would you expect to continue this effort? Do you have an estimate of the total amount of training needed?

Answer: During 1987 we plan to train 514 individuals with the funds provided for that purpose.

We recently completed a five year occupational needs survey of those occupational groups found to be the most difficult to fill. We project that with this training and with good journeyman level supervision, the Bureau will attain the level of professional development necessary to continue its operations at a fully satisfactory level in approximately ten years.

Tribe/Agency Operations

Question: The request for the new tribe/agency operations program is $295,088,000, a decrease of $6,336,000. The Bureau is also asking for appropriation language to allow for consolidated grants or cooperative agreements under this program. Are consolidated grants and cooperative agreements specifically authorized under P.L. 93-638?

Answer: The technical amendments to P.L. 93-638 (P.L. 98-250, April 3, 1984, 98 Stat 118, 25 USC 450e-1) broadened the application of Section 102 (25 USC 450f) under P.L. 93-638 to include grants and cooperative agreements. The appropriations language is required to permit "consolidated" grants, contracts or cooperative agreements.

Question: In formulating this new proposal, what kind of consultation was done with the tribes? Is there general agreement among the tribes to proceed with these new procedures?

Answer: During the past several fiscal years, the Bureau has considered all Tribe/Agency level programs which are included in the Indian Priority System (IPS) as a single block of funds when determining national budget priorities. This approach to budgeting results in a de facto "consolidation" of all programs on the IPS, at least during the planning stages. In years prior to FY 1987, we have then "split out" each tribe/agency program amount and displayed it in our justifications along with program items which were developed using national priorities rather than tribal priorities. Our FY 1987 proposal has omitted this latter procedure and retains the "consolidation" in our justification under Tribe/Agency Operations. Since we have, in fact, consulted with the tribes on their FY 1987 program priorities for these funds, some element of consultation on the proposal has occurred. However, regarding the specific decision to change the budget structure and method of display in the Justifications, the Bureau did not actively or formally consult with tribes. Informal disseminations of information to the field level on the proposal did occur during the budget development period (July 1985 to December 1985). These were in the form of a central office meeting with Area Directors.

Since no specific consultations have been held with tribes, we do not know at this time whether there is general agreement with the proposal. Many tribes have frequently requested more flexibility in the use of tribe/agency funding. We have received and processed, past years, literally hundreds of requests to administratively reprogram tribe/agency funds during the operating year. Since the proposal would improve the response time to such requests in FY 1987, we believe most tribes would support the proposal. Most concerns expressed (and there have not been many) about the proposal have been related to whether or not the tribes will be able to continue to set program priorities during the planning process. The proposal does not make any changes to the IPS process, therefore, these concerns have been fully considered.

Question: Describe how the consolidated grant/block grant proposal will work? How will the program accountability be maintained? What effect does your proposal have on current reprogramming procedures?

Answer: Provided below is an outline of how the proposal will work. It also specifically deals with "program accountability" and the effects on current reprogramming procedures.

TRIBE/AGENCY OPERATIONS OUTLINE

Indian Priority System

- A budget formulation system initiated in FY 1972 (calendar year 1970) to allow tribes to participate in the Bureau budget process.
- The system evolved into what is now identified as the Indian Priority System (IPS) which permits tribes to participate in the budget formulation process, at the local level, by recommending the order of their priorities and program funding levels to the BIA agency superintendent.
- The system allows an appeal process when disputes arise over funding levels or priorities. Assistant Secretary is the final arbitrator.
- Under the newly proposed tribe/agency operations budget activity, the IPS process would not change. That is, tribal priorities by program would continue to be displayed in Bureau budget requests to Congress. However, under this activity, tribes, at the beginning of the budget execution year, i.e., after appropriations were made, would have the opportunity to adjust program funding to meet current operational needs.

Tribe/Agency Operations Budget Activity

- Activity is proposed to allow tribes greater flexibility for the use of funds subject to IPS, and to address changes in plans and priorities.
- The concept would allow tribes, during the budget execution process, to make or request adjustments in the tribe/agency funds to meet current priorities and needs.
- Would provide a vehicle to handle a variety of financial assistance award instruments such as consolidated or block grants, contracts and cooperative agreements without the lengthy process of reprogramming as currently required within the Executive Branch (agency-area-BIA headquarters-Department-OMB), and with Congress for those items exceeding $250,000.

Tribe/Agency Operations Budget Accountability

a. Consolidated Contract/Grant Program - will permit tribes to consolidate two or more programs under a single contract/grant.

  - Fiscal accountability would be at the budget activity ("bottom line") level while program accountability would remain at the program element level (e.g., Law Enforcement, Agriculture, Social Services, etc.), since a tribe would be required to report results and costs by program.

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- Terms of Public Law 93-638 and published regulations will apply in relation to the exercise of the rights of tribes to operate Bureau programs.

- The IPS as currently structured will continue to be used as the budget formulation system.

- A tribe can negotiate a change in its program plan at the beginning of the budget execution year, at the end of the second quarter and during the first month of the fourth quarter. Any proposed change up to 25%, provided that such amount does not (of itself) exceed $250,000, may be approved locally. Any change exceeding 25% must be approved by the Assistant Secretary or his designee (e.g. Area Director), if any.

- Funds can be used only for those programs identified in an approved plan.

- Funds would be available for two years as is currently the case.

b. Cooperative Agreement (combined tribal operated/Bureau operated)

- Terms of Public Law 93-638 as amended by Public Law 98-250 and Public Law 95-224 and published regulations will apply in relation to the exercise of the rights of tribes to operate Bureau programs.

- The IPS as currently structured will continue to be used as the budget formulation system.

- Programs operated by tribe will have the same accountability as defined in a. above.

- Bureau operated programs will be subject to current accountability requirements (financial programming/reprogramming procedures). Changes between individual programs would be subject to the $250,000 bureau-wide administrative limitation.

- Program management would be joint, i.e., the tribe and Bureau would share management of all programs included in the agreement. Therefore, the "we-they" syndrome that frequently exists under separate 638 contract operated and Bureau operated programs would be eliminated.

- Two year availability of funds would apply to both tribal and Bureau operations.

c. Bureau Operated Tribe/Agency Programs

- The IPS as currently structured will continue to be used as the budget formulation system.

- Bureau operated programs will be subject to current accountability requirements (financial programming/reprogramming procedures). Changes between individual programs would be subject to the $250,000 bureau-wide administrative limitation.

- Funds would be annual with no carryover authority.

Tribe/Agency Operations Reporting

- For programs operated under contracts/grants or cooperative agreements, tribes will be required to meet current contracting/grant program requirements for reporting expenditures to the Bureau on a quarterly basis. Fiscal accountability will be on a "bottomline" basis with actual costs reported by program.
- Current financial and program internal and external reporting requirements for Bureau operated programs will remain unchanged.
- An annual report on actual obligations, by program as shown in the annual budget justifications for tribe/agency operations, specifically for consolidated contract/grant operations and cooperative agreement operations, will be made to the Congress by the end of the first quarter of the next fiscal year (at the time the President's Budget is submitted, e.g., FY 1987 actual results would be reported when the FY 1989 Budget is submitted).

Question: How do you answer the charge that this will be a means by which the Administration can discharge its responsibility for the programs involved? For example, in such programs as law enforcement or those involving trust responsibility, what if the tribe chooses to reduce or eliminate funding for those programs within a consolidated grant, and switch all funds to scholarships or vocational training?

Answer: Since our proposal requires Bureau management to approve the original program plans included in the budget request as well as any proposed changes to those plans, tribes will not be able to unilaterally reduce or eliminate funding for a program. In addition, the proposal would restrict any proposed change to the original plan to 25% of the program amount (not to exceed $250,000), which could be approved locally only if the tribe chose to operate programs either through consolidated contracts/grants or cooperative agreements with the Bureau.

Question: Will the tribes be able to consolidate programs from within each of the major categories only (general operations, trust operations, and management operations), or across these lines?

Answer: While our proposal displays the Tribe/Agency programs in three "categories", these are not intended to limit potential funding changes between programs. However, since at least two of the categories are somewhat "natural" subdivisions or groupings of programs, we expect that most proposed changes to accommodate consolidated contracts/grants or cooperative agreements would be within the categories rather than between categories.

Question: How will you be able to separate fiscal accountability from program accountability?

Answer: The fiscal accountability for a consolidated contract/grant would be solely for the total amount of funds included in the specific instrument. The contractor/grantee would be required to not exceed the approved dollar level and costs incurred would have to continue to meet the allowability tests as well as reasonableness. However, the distribution of actual costs by program included in the contract/grant would not be subjected to fiscal audit.

The program accountability will be based more on program results rather than cost. The contractor/grantee will be required to report (on a quarterly basis) actual costs and results (outputs) by program within the contract or grant. These costs and results will be compared to the plan not from a "fiscal" standpoint but from a "desired outcome" standpoint. Failure to meet the desired or planned results would not result in disallowed costs (a fiscal accountability result) but should result either in a revised (more realistic) plan or improvement in program operations under the contract/grant.

Under the tribe's portion of a cooperative agreement, similar fiscal and program accountability would be used. However, under such instruments, adjustment of funding and work between the Bureau and tribal operations would be possible in mid-year and could, therefore, require more careful accounting of both costs and results.

For those programs operated by the Bureau, current fiscal and program accountability would continue and current reprogramming procedures would also apply.

Question: How will Congressional add-ons or decreases, or other specific direction be carried out under this proposal?

Answer: Since Congressional directives usually involve adding or subtracting specific amounts of funding by program and or location, we would expect to implement such changes in the same manner as is done now. Current reprogramming procedures prohibit the use of subsequent reprogrammings to restore Congressionally mandated reductions. We intend to continue to adhere to the established reprogramming guidance on this issue. In addition, reductions or limitations imposed by laws such as "Gramm-Rudman-Hollings" would be applied as required.

Alaska Program Reductions

Question: A decrease of $6,336,000 is proposed, from the Alaska programs. What will be the impact on the one reservation in Alaska? Will services there be decreased?

Answer: There will be no effect on Annette Islands Reserve as services to it are provided by and funded under the Portland Area, which is not included in the proposal.

Question: Explain what is involved in the proposed Juneau Area reorganization plan, which calls for a consolidated service center? How much of the decrease is related to this effort?

Answer: The reorganization plan which has not yet been completed nor approved, except in concept, was the result of extensive review and feedback and planning sessions on service delivery. It was found that with increased contracting under Public Law 93-638, we had left all the layers and most of the positions within the Bureau intact (and denied funds to tribal contractors in doing so). The reorganization was initiated as an effort to fully implement the intent of self-determination, and to reduce the Bureau presence in order to increase funds to tribes. With increased contracting, the Bureau will maintain an adequate level of staff for administrative and technical assistance purposes. However, because more program operations will be contracted, less Bureau staff is required. The reorganization is also intended to better meet special and changing service needs of Alaska Natives that are not normally part of the Bureau's service delivery, (e.g., Reindeer husbandry, ANCSA, ANILCA, Marine Mammal Act, subsistence preference rights, etc.).

The consolidated services center concept was determined to be the most efficient method of accomplishing the above purpose. This requires some realignment of functions and a consolidation of most Area and Agency program and administrative functions into one office or under one direction. This one stop non-layered office would be designed to fulfill the trust responsibilities and all other programs, with particular emphasis on service delivery through P.L. 93-638 contractors with review and technical assistance at the center.

The savings in the proposed Alaska budget overall can be partially effected by implementation of the reorganization in an expeditous manner. However, little of the $6,336,000 proposed savings in tribe/agency can be accomplished by the reorganization since most of it is contracted under Public Law 93-638. The following is an estimate of the non-contracted funds that potentially could be saved by the reorganization.

College Student Assistance	$232,000
Other aid to tribal gov't	150,000
Social Services	166,000
Agriculture	55,000
Wildlife & Parks	8,000
Executive Direction	273,000
Administration	584,000
TOTAL	$1,468,000

Question: How much of the decrease in social services (-$400,000) is related to the proposed elimination of funding for ICWA grants in Alaska? If the ICWA program is restored, would these funds also need to be restored?

Answer: The reduction in social services is not related to the elimination of funding for ICWA grants in Alaska. If the ICWA program funds are restored, these social services funds in Alaska would not need to be restored.

Question: What statistics do you have to back up the statement regarding the "positive effects the improvement to the Alaska economy has had on Native incomes and poverty rates"?

Answer: The number of Alaska Natives participating in the labor force increased by 4% for men and 8% for women between 1970 and 1980 (page IV-II of Draft 1985 study). The number of employed Natives increased 74% from 1970 to 1980 (same source). The income for the average Native family in real income (increased in 1979 dollars) reflects a 39% increase from 1969 to 1979. The proportion of Natives below the official poverty level declined from 44% in 1970 to 26% in 1980. Each enrolled Alaska Native (under ANSCA) received at least $410 from ANSCA. Some at large shareholders received $6,525 (Page IV-18 of Draft 1985 study.) Some corporations have paid stockholder dividends. All Alaska Natives (as Alaska citizens) have received permanent fund dividends of about $300 to $500 per year for the last five years.

Question: Have you already coordinated with the State or local entities regarding turning the 55 miles or roads currently maintained by the Bureau over to them?

Answer: We have started the process for turning over to the State all roads maintained by the Bureau. We have only specifically discussed the exact implications and procedures involved for approximately 15 miles of previously constructed roads and all newly construction roads.

Question: What is involved in the reindeer program? How much funding will remain for this program?

Answer: The reindeer program was statutorily mandated in 1973 with the passage of the Alaska Reindeer Act. The purpose was to provide an economically viable industry from reindeer husbandry. Reindeer were purchased by the Government and loaned to Native reindeer herders who paid back the reindeer from herd increases so new herds could be started. The Bureau has responsibilities in monitoring roundups, marking, approving payback, disease control, research, and all aspects of animal husbandry. The Bureau is also responsible for monitoring probate of estates of deceased Natives owning reindeer, grazing permits, slaughter, sale of reindeer and reindeer parts, distribution of payback reindeer to new herders, training of herders, and all management aspects to implement the Act.

Question: Why are the national water resources guidelines not applicable in Alaska? Why is this a basis for eliminating the program? Shouldn't specific guidelines be provided instead?

Answer: The program was not eliminated. It was decided that funding is not necessary at this time. The water resource language and implementation has been geared to water resource inventories, use studies, and hydrological studies. These are quite appropriate for large acreages that cover major portions of watersheds (such as large trust reservations in the lower 48). The use of these funds on scattered Native Allotment acreages (of less than 160 acres) is inappropriate and not cost effective at this time. When developments on or near Native allotments become a more common occurrence, and amount, use, quality and rights to become a bigger priority, we will be asking for larger funding for this program in Alaska. There is very little that can be done now. Guidelines and plans for this kind of a program will need to be developed specifically for Alaska, but are not now contemplated because of lack of need for the next two to five years.

Question: What balance will remain in executive direction if the cuts are agreed to, and how will it be used?

Answer: $354,000. It will be used to fund the Area Director and five superintendents' salaries.

Self-Determination Grant Reduction - Tribe/Agency Operations

Question: A reduction of $4,000,000 is also proposed to self-determination grants. Is this reduction based solely on tribal priorities?

Answer: No, the reduction took other factors into consideration in addition to the tribal priorities and budgetary considerations. Essentially, the savings resulting from grant funds are proposed by the Bureau as an offset to or proposed increase to Contract Support Funds (CSF). The rationale was:

- The increased funding in CSF would significantly improve on a tribes's ability to administer contracts under P.L. 93-638.
- The vulnerability of contract funds ($280,000,000) to potential waste and abuse requires that tribal contractors maintain management systems and procedures necessary for sound fiscal management and competent program implementation. An adequate level of contract support funding is necessary to support tribal contractors in these essential efforts.

Buildings and Utilities Construction

Question: The request for buildings and utilities is $28,960,000, a decrease of $6,405,000 from 1986. No funds are requested for advance planning and design. Are there additional projects for which planning and design has not yet been accomplished? If so, how much would be required?

Answer: The Bureau is required to publish a notice of school construction priorities in the Federal Register. The FY 1987 list included two schools (St. Francis Indian School, in South Dakota and Turtle Mountain Middle School, in North Dakota). As part of the Federal Register notice, it was indicated that no other applications for new construction would be ranked pending development of a master plan for BIA Education. Until the plan is developed, no further planning and design will be conducted beyond the schools identified above will be considered. A determination on whether the Oglala Community High School will be ranked for new construction depends on a separate study for that school which will be completed in approximately one month.

Irrigation Construction

Question: The request for irrigation systems is $13,900,000, a decrease of $4,321,000. What is the status of the Navajo Indian Irrigation Project construction? Have the funds provided last year been obligated?

Answer: Facilities have been completed to serve 48,000 acres (five blocks of approximately 10,000 acres each) of the 110,630 acres in the authorized project. Current construction will provide water delivery to an additional 4,200 acres in Block 6. To date, about $240 million has been appropriated and the estimated cost to complete the project is $288 million at today's prices. The latest funding increment of $8.9 million was provided by a FY 1985 add-on.

Funds available in FY 1986 have been obligated for contracts covering phase I of block 6. Only a minor amount for contingencies remains unobligated.

Question: Could additional funds be used to continue the construction of Block 6 in FY 1987? If so, how much would be required?

Answer: $8.3 million is required to complete Block 6. Construction on Block 6, Phase II, could commence in FY 1987 if funds were available. Construction of Phase I will be completed during FY 1987.

Question: A February letter from the Inspector General raised from the issue of whether BIA or the Bureau of Reclamation would be responsible for payment of the AK Chin project's unpaid OM&R costs, beginning in 1988. Have you responded to this letter?

Answer: A joint response by the Bureau of Reclamation and Bureau of Indian Affairs was prepared April 9 in response to the February 21 memorandum from the Inspector General.

Question: Has any decision been made as to which agency will be responsible for requesting these costs? How much will be involved?

Answer: The two agencies are aware of the Secretary's responsibility to provide OM&R funds as early as FY 1988. The issue of budget responsibility has not yet been resolved but will be during the formulation of the FY 1988 budget.

The amount required for delivery of the full 75,000 acre-feet from the Central Arizona Project is nearly $4 million.

Question: The IG also issued a report on the Fort Belknap irrigation project in February. What action have you taken in response to the IG's recommendation that a study be performed evaluating the project before any further funds are expended?

Answer: The Bureau is preparing a written report based on an evaluation made at the site during the fall. Based on this evaluation, the Bureau has utilized nearly all of the funds remaining from the FY 1985 funding. The Bureau is currently preparing a response to the I.G. report, prior to expending the remaining funds.

Question: A request of $1,000,000 is included for the Flathead Irrigation Project. Why did the Secretary decide last November that the Bureau of Reclamation would manage this project, rather than BIA, in spite of the Tribes' opposition?

Answer: The Secretary decided that the Bureau of Reclamation has a better capability to effectively manage the irrigation system at Flathead and to begin a proposed rehabilitation program there. With respect to the technical operation and management functions of the Irrigation Division, the Irrigation Manager will be supervised by the Bureau of Reclamation Regional Director, Boise. In addition, with respect to all other matters, in particular trust matters and BIA functions, the Irrigation Manager will be supervised by the BIA, Flathead Agency.

Question: Is it true the FIIP study recommendations run directly contrary to the Secretary's decision?

Answer: Yes, but for accuracy and completeness the recommendation contained an explanation to prevent misinterpretation with the words,"... a change in control is not advisable at this time."

Question: Why was no EIS prepared prior to issuing the November memorandum?

Answer: The Department did not believe the November 29, 1985, internal memorandum constituted a major Federal action significantly affecting the quality of the human environment.

Question: How will you ensure that the problem that led to the current state of deterioration will not continue?

Answer: With properly determined and realistic irrigation O&M assessment rates, the needed fiscal resources will be generated to begin the rehabilitation program which will take several years. At the completion of major rehabilitation work, the annual operation/maintenance and repair program prepared by the Bureau of Reclamation, which presumably will be modeled after other Reclamation projects, will be implemented. The OM&R performance record of the Reclamation standards speak for themselves.

Question: How will the $1,000,000 you are requesting be used? What is the total rehabilitation program expected to cost? Over what timeframe?

Answer: The $1,000,000 in FY 1987 will be used to initiate the rehabilitation program for the project water distribution systems. The FIIP study identified the figure of $9.2 million as the approximate need for the rehabilitation work, but all the parties understood the figure to be the result of a "windshield" survey. No determination has been made to date regarding total costs or a time frame on this effort.

Question: Why should this effort start now, rather than waiting for the results of the ongoing water rights adjudication and further engineering evaluation of the system by BOR? How might the water rights adjudication affect the rehabilitation effort?

Answer: The BIA is considering the extent of rehabilitation work for FIIP in view of the on-going litigation. However, the work associated with $1.0 million will not seriously be affected by the results of water rights adjudications and the conclusions of further engineering evaluations.

Question: $1,500,000 is requested for the Papago Tribe, pursuant to the Southern Arizona Water Rights Settlement Act. What is the balance remaining to be funded under the Act?

Answer: The Tribe is assessing the accomplishments under the Act with the Bureau of Reclamation to determine if all of the requirements will be met with the additional funding proposed in the FY 1987 request. Whether or not a waste water exchange facility is needed depends on the results of a Bureau of Reclamation study. With that exception, additional requirements are not likely to exceed $1 million and would be considered in future budget requests.

Safety of Dams Program

Question: There is a request of $9,155,000 for the safety of dams program. How much remains to be done in this program? When do you expect to complete it?

Answer: There are fifty-two (52) dams in the high and significant downstream hazard potential classification. The initial on-site inspections have been completed for all 52 dams. Approximately fourteen inspection reports have not been completed.

At this time, four dams have been found to be safe and two dams are in the Reclamation program. Safety modifications on Coolidge Dam are nearly complete. Therefore, thirty-one other dams require modification action. Through FY 1986 the needed safety modifications will be finished on two dams. The FY 1987 funding will finish seven more dams, leaving twenty-two dams yet to be modified in future years.

In terms of formal inspections (every six years) and informal inspections (every three years) as required by the Federal Guidelines for Dam Safety, the program has no completion date. The correction of the currently identified safety deficiencies for the dams will be completed in a construction sense when all of the dams have been addressed by the program.

Housing Construction

Question: The request for housing is $16,295,000, a decrease of $28,181,000. The reduction to the base program, not including the add-on for Navajo relocation housing, is $6,211,000. No funds are included for new housing units. Given the estimated need of almost 50,000 new homes required, what is the basis for eliminating funds for new homes?

Answer: The basis for eliminating funds for new homes reflects a policy determination to hold all new start construction programs to a minimum.

Question: What funds would be required to maintain the 1986 level of new homes construction?

Answer: $6,161,000 would be required to maintain the 1986 level of new homes construction.

Question: If the Alaska housing program is restored, would the three positions also need to be maintained?

Answer: If the Alaska housing program is restored, the Bureau estimates that it would need to provide 3 positions for this effort.

Road Construction

Question: There is no request for road construction. As in previous years, the funds would come from the Federal Highway Trust Fund, subject to reauthorization. What is the status of reauthorization of the Fund? If reauthorized, will the Indian program continue at the same level as in prior years?

Answer: The House Committee on Public Works and Transportation is considering several proposals for reauthorization. One of these does not reauthorize funding of federal roads, including Indian Reservation Roads. The various proposals before the Committee reauthorize the Indian road construction program at the annual levels of $100 million, $75 million, and 0. Because markup has not yet been scheduled at this writing, we are unable to assess which proposal will be implemented.

Question: The committee has received a request for $4,000,000 to improve the Honobia Indian road in Oklahoma. Are you aware of this project? Does the road need major improvement? Is the $4,000,000 estimate feasible for the work required?

Answer: Yes, we are aware of this project. State Highway 144, 15 miles south from Honobia to Bethel, is a dirt road with some gravel. It is an important route to the Choctaw Nation (their first priority for construction) and needs major improvement. Our estimate of the improvement cost is $4,500,000.

Question: Could funds for this project be earmarked from Highway Trust Fund monies?

Answer: Yes, funds could be earmarked from Highway Trust Fund monies, but the Bureau does not consider this necessary. Rather, the Bureau has proposed a cooperative project with the State of Oklahoma to construct this road with 25% Bureau funding (from Highway Trust Fund contract authority) and 75% from Federal-Aid secondary funds.

Payment to the Alaska Escrow Fund

Question: Last year, $7,877,000 was provided for the Alaska Native Escrow account. This was reduced by $337,000 under Gramm-Rudman-Hollings. Is it necessary under law to restore the $337,000 reduction? Why haven't you requested the funds be restored?

Answer: It is necessary to restore the $337,000 only if it is needed to make payments at the time of conveyence. The law requires that amounts be paid two years from the passage of the Act (ANILCA) or at the conveyance, whichever is later. No restoration has been requested, since at the time the President's budget was submitted, the amounts of the reductions were not known. The amount of principal requested for the escrow account was based on collections from withdrawn lands. In the event that collections were reported from lands which were not selected, it is possible the entire amount which was originally requested may not be needed. Also, not all selected lands have been conveyed and the authorized payments for collections from these lands will be delayed until the time of conveyance is made. The Bureau is currently processing the principal payments to the corporations which have received conveyances. When this effort is complete, the possible fund deficiency will be known and included with the future fund request for the interest which is due the corporations. A report on the amounts paid, and the balances remaining to be paid will be provided on or before May 31.

Administrative Provision on Alaska Funding

Question: You are requesting language under administrative provisions to limit funding in the State of Alaska to $25,063,000. Even assuming the Congress agrees with your proposed reduction to the State of Alaska, why is this language necessary?

Answer: The intent of this language was to limit legal challenges based on the Bureau's experience in the previous elimination of funding for general assistance. The language suggested would avoid litigation which could prove to be costly for the Federal Government.

Quarters Operation and Maintenance

Question: The amount included for quarters O&M is $9,000,000, an increase of $1,000,000. What was the total annual quarters O&M program, prior to establishment of this special account?

Answer: Prior to the Quarters Program becoming an "no-year" account, in FY 1984 actual collections were $7.8 million. The $9.0 million was estimated for FY 1987 in anticipation of Quarters rental rates increasing. However, authority to obligate is limited to actual receipts regardless of our estimate.

Loan Programs

Question: The request for the Indian loan guaranty and insurance fund is $2,485,000. A limitation of $30,000,000 is also proposed. What is the basis for this limitation? If a dollar amount were not specified, what amount of loans could be guaranteed under current authority and within current resources?

Answer: The proposed $30 million limitation on new guaranteed loans is an administrative restriction, which has been established in order to limit the Government's contingent liability for any guarantees which might default. Guaranteed or insured loans are limited under the Indian Financing Act of 1974 to a ceiling of $200 million. If the Bureau guarantees the $62.7 million proposed for FY 1986 and repayments on loans continue as expected, loans amounting to approximately $40 million could be guaranteed in FY 1987. This would put us very near the $200 million ceiling. This level of guarantees would require a increase in interest subsidy funding in the amount of $167,000 to cover the additional $10 million.

Question: What is the reason for the increases proposed over last year's levels in both interest subsidy, and management and technical assistance?

Answer: Since passage of the 1984 amendments to the Indian Financing Act, appropriations for interest subsidies are requested and obligated annually based on current year cost, rather than for the entire life of the loan guarantee as in the past. Therefore, interest subsidy costs for loans guaranteed from FY 1985 onward will continue to rise each year unless no new loans are made, the current loans are paid down sufficiently to reduce the subsidy, or are paid in full. These loans will be reviewed after 5 years to see if an interest subsidy is still deemed necessary for sucessful operation of the business.

The 1984 amendments to the Indian Financing Act also expanded the scope of eligibility for guaranteed loans and grants; and allowed for assistance in preparing the loan or grant packages. This has increased the requests for assistance from clients already in business, which are now also eligible.

Tribal Trust Funds

Question: You are requesting $1,000,000 for tribal trust funds, down from $4,000,000. What is the reason for this decrease?

Answer: The FY 1987 estimate of $1,000,000 for tribal trust funds represents a decrease of $3,000,000 in "current" budget authority. This reduction was based on actual FY 1985 current budget authority used, which was only $460,000. Therefore, an estimate of $1,000,000 is more appropriate than prior year requests.

Gramm-Rudman-Hollings Impact

	FY 1986 Enacted to Date	P.L. 99-177 Reduction	FY 1986 Adjusted Approp.
School Operations	$189,378	$-8,143	$181,235

The majority of funds in the school operations subactivity are distributed to schools on a formula basis. Therefore, the impact of the P.L. 99-177 reduction will be felt by all 180 Bureau-funded schools. Each school administrator, in consultation with the school board, will have to make program adjustments to accommodate this reduction. Some potential areas of impact include: (1) elimination of summer school programs funded by ISEP, (2) curtailment of extracurricular activities for students, (3) deferral of staff development and training, (4) delay of special initiative programs such as computer assisted instruction and vocational programs, and (5) delayed replacement of school equipment such as laboratory equipment.

Authorization: 25 U.S.C. 13 (The Snyder Act of November 2, 1921) is the basic authority under which the Secretary provides services, including education, to Federally-recognized Indian tribes. 25 U.S.C. 2001-2019, the Education Amendments of 1978 (P.L. 95-561 as amended in 1979, 1984, and 1985), provided new authorities to the Office of Indian Education Programs (OIEP), including establishment of a new personnel system, line authority to the field, direct formula funding of schools, and specific decision-making authority to Indian school boards.

Objective: The objectives of the school operations program are: (1) to provide high quality basic educational and residential programs to Indian students not served by public or sectarian schools; (2) to provide residential care for a limited number of Indian students attending public schools; (3) to meet the special needs of Indian students and address those problems intensified among Indian children because of the uniqueness of their situation, such as bilingual needs, counseling, and guidance; and (4) to provide operational funding to elementary and secondary schools under contract to tribes. Funds have not been included in this budget request to implement the provisions of P.L. 99-228 which amended Title 25 of the U.S. Code to redefine "eligible students" for Indian education programs. Though the Bureau has collected some preliminary data, the full impact will not be known until school opens in the Fall of 1986.

A. Indian School Equalization Program

Base Program ($156,922,000; FTE 4,217): While 82% of Indian students are served by state-operated public schools, there continues to be a need for a direct Federal role in Indian Education. The remaining approximately 18% of all Indian children in school are provided an education in schools run by the Bureau or by tribes under contract with the Bureau of Indian Affairs pursuant to P.L. 93-638. Approximately 34% of the estimated average daily membership (ADM) in Bureau-funded schools in FY 1986 are in residential schools either because the students live farther than a 1-1/2 mile walk from public or federal day schools' bus routes or because of special social or academic factors such as poverty, family difficulties, or problems encountered in other school systems.

Attachment 1

CONSOLIDATED TRAINING PROGRAM FY 87

"INDIAN SERVICE CAREER MANAGEMENT SYSTEM"

CONTENTS

CONSOLIDATED TRAINING PROGRAM FY 87

- INTRODUCTION
- ENTRY LEVEL DEVELOPMENT PROGRAM
- COOPERATIVE EDUCATION PROGRAM
- EXECUTIVE MANAGEMENT PROGRAM
- PROFESSIONAL SOCIAL WORK TRAINING
- IN-SERVICE TRAINING AND ORIENTATION

Consolidated Training Program FY 87

INTRODUCTION

There has, during the past several years, been a perceptable drain on long-term institutional experience at the mid and top grade levels of the Bureau. The retiring and transferring non-Indian employee group constitute a high percentage of mid and top level management staff. Their departure places the Bureau at a disadvantage, since very few Indians have been designated and trained to fill these positions. The FY 1985 Senate Appropriation Report Language directs that the BIA should supplement the use of proper standards by serious efforts to recruit and train Indians to improve the quality and efficiency of the services provided by BIA.

Although the Bureau currently spends approximately two million dollars each year on training, this expenditure does not begin to meet the over-all training needs of the Bureau employees. The one million three hundred fifty thousand dollars requested for training in FY 87 is about one third the amount needed to begin to meet the basic training needs of the Bureau. The Bureau is faced with the problem of where to find the necessary funds to train Bureau employees and not reduce funds going to tribal programs. Each dollar the tribe spends goes to help feed, educate and provide housing for its tribal members. Therefore, resources used to improve Bureau operations, at the expense of the tribes, cannot be accepted by the tribes due to fewer dollars available for basic services.

During the past four years the Bureau has taken a number of steps to strengthen employee recruitment and development which have been helpful. Over the short term, a system of better career management can be implemented to meet the basic needs. For the longer term, however, the Bureau needs to work on deeper problems of human resource management. There is a pressing need to educate and motivate capable Indians to develop careers in the Bureau of Indian Affairs. To do this, the Bureau must develop and instill a strong fundamental understanding of the needs of Indian service and the legal, social, and administrative structure upon which such service rests.

The Bureau proposes to establish an education and training program to provide in-service training and formal education opportunities for Indians who seek successful careers with the Bureau. This approach has been successfully implemented by other Federal agencies who, like the Bureau, have special and immediate requirements to train and educate large numbers of people. The Bureau strongly advocates a concept that academic institutions provide the best learning opportunities because of their established purpose. In addition, once they have developed a curriculum of study, they can continue to provide and update these courses routinely without new high costs each year. The Bureau has in the past relied heavily on private contractors to meet specialized training needs. The results have generally been minimal and transitory, since there is no guarantee that the same contractor will be available to continue the training in future years. Therefore, this program will rely heavily on established academic institutions to develop and provide curriculum to meet the Bureau's training and education needs. This effort will be reinforced by in-service training and orientation.

The proposed education and training program will be centrally managed. Training and education requirements will be identified, justified and presented to the Deputy Assistant Secretary - Indian Affairs for determination of priority.

The proposed funding will be used to develop the plans and curriculum for implementation; for individual training expenses including course fee/tuition, in some instances salary, travel, and per diem/subsistence; and for instructors, materials, and facility expenses.

Level of Training Program Participation

The results of a recent training and occupational needs survey has provided Bureau management with information upon which priorities for training programs can be determined. There isn't enough money in the projected FY 87 budget to do all the training required but there is seed money to start training in several key programs. These programs, with projected numbers of participants and costs, are provided in the following illustrations.

ENTRY LEVEL DEVELOPMENT PROGRAM

BACKGROUND

The results of a recent Bureau-wide occupational needs survey has shown that over the next five years the Bureau has a great need to fill vacancies in those traditionally hard to fill occupational areas. In order to meet this need and provide competent journeyman level employees in adequate numbers, the Bureau must look to its entry level training program to help meet the need.

PURPOSE

The Entry Level Development Program is initiated to enable the Bureau to commence locating and recruiting highly qualified candidates in occupations which have been identified as shortage categories where there is a need for Indian employees.

PROGRAM DESIGN

The program design calls for the establishment of developmental positions with duty stations at various locations which affords a complete work experience in the occupational need area. Each entry level trainee will be under the supervision of a full performance journeyman who provides the developmental assignments and direction to the trainees. Program participants who meet the Federal qualification standards will be competitively selected at the GS-5/7 entry levels. They will be provided with individual development plans and assisted by the journeyman supervisor from entry level to the full performance GS-9/11 grade levels. Upon reaching the full performance level, the trainee will be laterally reassigned to a full-time permanent vacancy.

Budget

Entry Level Development Program
100 participants - GS-5/7/9

Travel/Per Diem	$500 x 100 =	$50,000
Formal Training	$1,000 x 100 =	$100,000
Total		$150,000

COOPERATIVE EDUCATION PROGRAM

BACKGROUND

Cooperative Education is an arrangement which provides individuals with periods of study interspersed with periods of study-related employment. It provides periods of study-related, fully paid employment for students in 2-year or 4-year colleges who are pursuing a curriculum in which the work experience is prerequisite to the award of a degree. The program is conducted in accordance with a planned schedule and a working agreement between the employing agency and the educational institution.

PURPOSE

Implementation of the Cooperative Education Program will serve the Bureau of Indian Affairs by providing academic training in technical and professional fields to individuals, thereby qualifying them to enter the Federal service in technical or professional occupations. It will provide the Bureau with Indian professionals prepared by work experience in positions with career potential within the Bureau.

PROGRAM DESIGN

The Cooperative Education Program permits competitive selection for career jobs on the basis of proven performance; provides a means of directing students, according to their interests, toward occupations that promise career opportunities; reduces the cost of the high rate of turnover that is characteristic of the first three years on a job. The work study agreement provides a thirteen week work assignment each year with the Bureau with the remainder of the year spent in academic study. The primary benefit of this program to the Bureau is that it provides an excellent recruitment resource to fill entry level positions in those hard to fill occupational groups.

Budget

Cooperative Education Program
Entry Level GS-3
With 5 FTE 20 Coop Students can work each year.

Salary		11,458
Benefits	10%	1,145
		$12,603

12,603 x 5 = $63,015

Travel/Per Diem	$500 x 20 = $10,000
Formal Training	$2,500 x 20 = $50,000
Total	$123,015

EXECUTIVE MANAGEMENT PROGRAM

BACKGROUND

The Executive Management Program is a management development program designed to enhance specific competencies of potential and encumbent Bureau managers.

To implement this policy, the BIA will operate an Executive Management Program (EMP). The EMP is designed to: (1) identify and evaluate the most capable candidates for managerial/executive positions; (2) develop incumbent managers/executives in a planned and systematic manner and (3) place managerial/executive personnel effectively.

PURPOSE

The Executive Management Program is a system through which the placement of qualified individuals in management positions throughout the Bureau is implemented.

PROGRAM DESIGN

As vacancies occur within the Bureau a list of applicants will be provided to management providing qualified individuals for possible selection. The competency level of each applicant will be matched with the competency requirements of the positions which are vacant. The applicant list will then be ranked in order of qualification for each career field. This is necessary for expediency in the filling of all vacancies at the management level.

Employees in the Executive Management Pool may be selected to fill vacancies (by promotion or reassignment), without further competition. However, they must have completed requirements toward satisfying competency levels for the vacant position or have scheduled developmental activities for satisfying competency requirements within six months of selection to a new position. The developmental activites will be recorded on the employee's Individual Development Plan.

Budget

Funding support for BIA participants in the Departmental Manager Development Program (DMDP).

Salary	4 participants		$145,599
Benefits	10%		14,559
			$160,158
	Travel/Per Diem	$10,000 x 4 =	40,000
	Formal Training	4,000 x 4 =	16,000
	Total		$216,158

Executive Management Program Management Development

50 participants

Travel/Per Diem	$1,000 x 50 =	$50,000
Formal Training	2,000 x 50 =	100,000
Total		$150,000

Departmental Management Development Program	$216,158
Executive Management Program	150,000
Total	$366,158

PROFESSIONAL SOCIAL WORK TRAINING

BACKGROUND

Recruitment of professionally trained social workers qualified for social work positions has been historically difficult for the Bureau of Indian Affairs. This difficulty is directly related to the relatively remote, underdeveloped rural areas where staff openings usually occur. Another facet of this general problem is the desirability of employing professionally trained social workers who are also of Indian ancestry. Although the Bureau has initiated efforts in the past to provide professional social work training, professional social workers are simply not available in numbers sufficient to meet even minimum staffing requirements nationwide.

PURPOSE

The purpose of the Professional Social Work Training Program is to enable the Bureau to provide sponsorship of long-term professional training opportunities for Bureau social services personnel. These training opportunities are directly related to the acknowledged short supply of professionally trained social workers interested in reservation work. An additional benefit is the provision of needed support for professional training of social workers who are of Indian ancestry.

PROGRAM DESIGN

The program design calls for the selection of 10 students for FY 1987 and would include the expense for salary, travel, relocation, and tuition. Selection will be made from the incumbents of Social Service Representative positions. Selection will be based on interviews, evaluation, previous work history and demonstrated ability to assume professional responsibilities. The Professional Social Worker Training Program will be under the general supervision of the Chief, Division of Social Services and will be coordinated with the Training Division, Central Office.

Budget

One year costs for 10 employees average grades GS-7/9

Salary (Average)	$20,000 x 10 =	$200,000
Travel/Per Diem	2,000 x 10 =	20,000
Relocation	8,000 x 10 =	80,000
Formal Training	4,000 x 10 =	40,000
Total		$340,000

IN-SERVICE TRAINING AND ORIENTATION

The in-service training would address those management competencies and skills essential to Bureau employees for successful implementation of programs. Based on a recent Bureau-wide training needs survey, the in-service training would include, but not be limited to the operation and maintenance of basic management systems, i.e., financial management, personnel management, office automation, real property management, audits, contracting, property management etc.. Further, the requirements of applicable legislation and regulations, and the essential elements of effective program management, including monitoring and evaluation, would be covered. Such training would also concentrate on the basic requirement of the Bureau staff to work effectively with tribal staff in the preparation of realistic program work plans, supporting financial budgets and internal management controls for program operations. It would also include the development and maintenance of financial status and program progress reporting procedures.

An integral part of the in-service training will be an intensive orientation for Bureau staff in Tribal Self-Determination as National Indian Policy as well as the crucial role of Bureau staff in working with tribes to achieve the objectives of this policy. The orientation will emphasize the significant role of Bureau staff in encouraging and supporting tribes as they assume an ever increasing role in the development and implementation of programs for Indians.

Contracting Officer - Warranting at the 1-4 Levels. About 250 Levels I & II contract specialists with about 150 courses per year with average course cost of $1,000.

$1,000 x 150 = $150,000

Lower graded contract specialists developmental training for warrant purposes. About 50 people for an average course cost of $1,000.

$1,000 x 50 = $50,000

Total = $200,000

Trust Fund Management. Based on 50 employees, 3 day course to 3 weeks, based on training need survey. Average cost of course $800.00

$800.00 x 50 = $40,000

Royalty Management

Based on 50 employees, 3 day course to 3 weeks, based on training need survey. Average cost of course $800.00

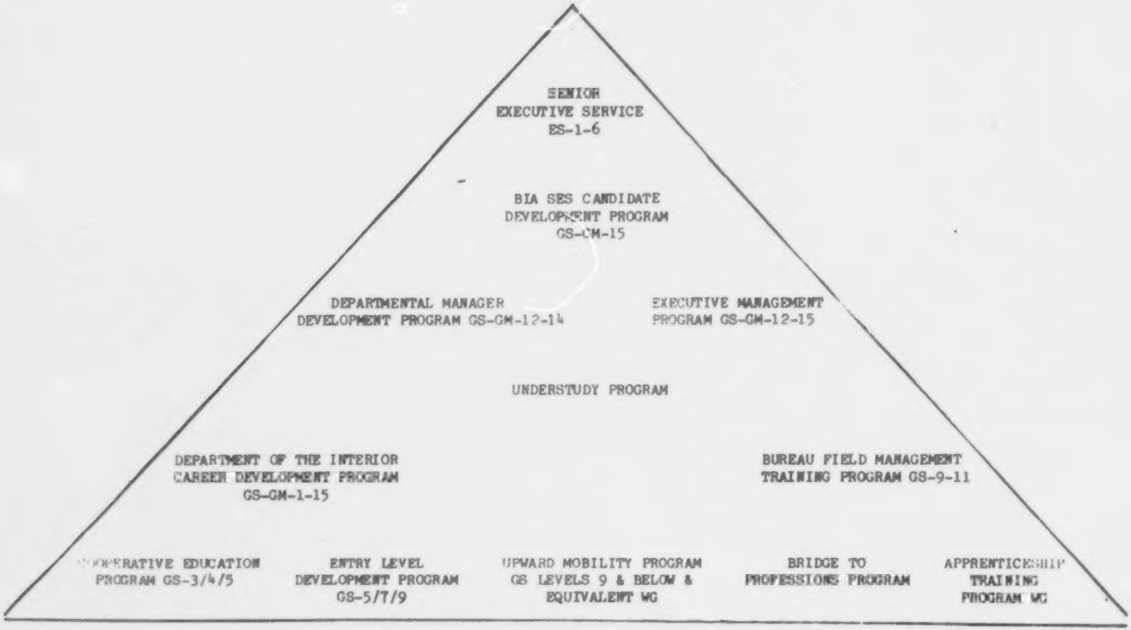
$800.00 x 50 = $40,000

Total = $80,000

Superintendent Orientation. 30 superintendents/year. Each Superintendent spends 1 month/year in Washington, DC.

Travel/Per Diem	$3,000 x 30 =	$90,000
Other Expenses	=	827
Total		$90,827

Entry Level Development Program	$150,000
Cooperative Education Program	123,015
Executive Management Program	366,158
Professional Social Work Training	340,000
In-Service Training & Orientation	370,827
Total	$1,350,000



SENIOR
EXECUTIVE SERVICE
ES-1-6

BIA SES CANDIDATE
DEVELOPMENT PROGRAM
GS-GM-15

DEPARTMENTAL MANAGER
DEVELOPMENT PROGRAM GS-GM-12-14

EXECUTIVE MANAGEMENT
PROGRAM GS-GM-12-15

UNDERSTUDY PROGRAM

DEPARTMENT OF THE INTERIOR
CAREER DEVELOPMENT PROGRAM
GS-GM-1-15

BUREAU FIELD MANAGEMENT
TRAINING PROGRAM GS-9-11

COOPERATIVE EDUCATION
PROGRAM GS-3/4/5

ENTRY LEVEL
DEVELOPMENT PROGRAM
GS-5/7/9

UPWARD MOBILITY PROGRAM
GS LEVELS 9 & BELOW &
EQUIVALENT WG

BRIDGE TO
PROFESSIONS PROGRAM

APPRENTICESHIP
TRAINING
PROGRAM WG

CAREER PATHS

642

Attachment 1

CONSOLIDATED TRAINING PROGRAM

	FY 87	FY 88	TOTAL
ENTRY LEVEL DEVELOPMENT PROGRAM	$150,000	+ $220,339	$370,339
COOPERATIVE EDUCATION PROGRAM	123,015	123,015	123,015
EXECUTIVE MANAGEMENT PROGRAM	366,158	+ 75,000	441,158
PROFESSIONAL SOCIAL WORK TRAINING	340,000	340,000	340,000
IN-SERVICE TRAINING & ORIENTATION	370,827	370,827	370,827
UNDERSTUDY PROGRAM	- 0 -	221,790	221,790
EMPLOYEE DEVELOPMENT FUNCTION	- 0 -	132,871	132,871
TOTAL	$1,350,000	- 0 -	$2,000,000

Attachment 2

CONSOLIDATED TRAINING PROGRAM

	FY 87		FY 88		TOTAL
Entry Level Development Program	100	participants, Budget for travel/per diem, formal training	+ 10	participants, GS-5 positions, salary	10
			+ 50	participants, travel/per diem, formal training	150
Cooperative Education Program	20	participants, Budget for salary, travel/per diem, formal training	20	participants, salary, travel/per diem, formal training	20
Executive Management Program	4	participants, Budget for DMDP salary, travel/per diem, formal training	4	participants, salary, travel/diem, formal training	4
	50	participants, MDP Budget for travel/per per diem, formal training	+ 25	participants, travel/per diem, formal training	75
Professional Social Work Program	10	participants, Budget for salary, travel/per diem relocation, formal training	10	participants, salary, travel/per diem, relocation, formal training	10
In-Service Training & Orientation	300	participants, Budget for contracting, realty/trust, formal training	300	participants, Contracting, realty/trust, formal training	300
	30	participants, Superintendent Orientation, travel/per diem	30	participants, Superintendent Orientation, travel/per diem	30
Employee Development Function			6	participants, salary, travel/per diem, formal training	6
Understudy Program			5	participants, salary, travel/per diem, formal training	5
TOTAL	514				610

Questions Submitted by Congressman Norm Dicks

Puyallup Tribe Land Claims

Last year we had a long discussion with your predecessor Mr. Fritz concerning the pending land claim by the Puyallup Indian Tribe. I don't know how familiar you are with the dispute, but it basically involves land claims covering a considerable amount of acreage in and around the city of Tacoma. During the course of the past 2 years, the Tribe and representatives of state and local governments as well as private parties have been negotiating a settlement to the claims.

We recently suffered a setback when the Tribal membership rejected the agreement that had been reached between the negotiators. Now, however, there is an effort underway within the Tribal membership to begin the discussions again, and I am very hopeful that we will eventually come to Congress with a negotiated settlement for consideration.

Question: Do you agree with Mr. Fritz that negotiated settlements are generally preferrable to continued litigation on land claims?

Answer: Yes, negotiated settlements are generally preferable because of considerable savings to the Government in terms of time and costs.

Question: Do you anticipate any change in policy that might inhibit the Department's participation in the settlement process?

Answer: The Bureau does not anticipate any change in policy.

U.S. - Canada Salmon Treaty

Question: I see that you have requested $1 million to implement BIA's responsibilities under the U.S.-Canada Salmon Treaty. I also have before me a budget request submitted by the United States Treaty Commissioners that requests an appropriation of $2.3 million for this purpose. The commissioners' request is quite specific concerning how these funds would be spent. Your request, on the other hand, does not appear to have any details. Can you outline for me what you intend to spend your $1 million on?

Answer: The $1 million requested by the BIA has not been broken down by study component (Bonneville fish sampling, Oregon spawning surveys, chum salmon research, etc.). The Bureau believes that the two inter-tribal fisheries commissions, working in conjunction with the state and federal agencies comprising the Pacific Salmon Commission, are in the best position to allocate the overall resource base provided for Treaty implementation through the budgets of the Departments of Commerce, State and Interior. Because of the coordinated and joint nature of the studies proposed by the Pacific Salmon Commission, any changes in funding levels requested by the participating agencies and entities will have to balanced off against each other. Depending on FY 1987 funding levels received by the states, tribes and Federal agencies responsible for implementing the U.S.-Canada Treaty, the Pacific Salmon Commission will allocate funds and make any modifications to its overall plan as required for optimizing treaty commitments given the funding available from these various sources. Tribal programs and requirements would be factored into this process.

Question: You have now had the commission budget request before you for about 2 months. Do you agree with the priorities outlined in this budget?

Answer: The Commission request was prepared by professional state, tribal and Federal fisheries biologists. We have no reason to disagree with the priorities established by this group. However, the President's budget was developed to ensure that only the highest priority requests were included within the funding constraints. Therefore, not all of the request could be accommodated.

Question: Is the work allocated to the tribes in the commission budget being duplicated by any other agency?

Answer: In adopting the FY 1987 budget proposal involving the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Department of State, States of Alaska, Washington, Oregon and Idaho, the Columbia River Inter-Tribal Fish Commission, and the Northwest Indian Fish Commission, the Pacific Salmon Commission proposed only those programs that it considered: (1) necessary to the direct implementation of the Treaty, (2) not duplicative, in whole of in part, of any other program, and (3) cost-effective and coordinated with other efforts. To our knowledge, work allocated to the tribes is not being duplicated by another agency.

Question: Is this work important to the implementation of the Treaty?

Answer: As noted previously, the Pacific Salmon Commission proposed only work that it considered necessary for the direct implementation of the Treaty. We are not aware of any effort proposed in the Commission budget request which is not important to the implemention of the Treaty. However, the budget proposal is the "optimum" amount, not necessarily an "adequate" amount to carry out the terms of the treaty.

Question: If we underfund the BIA portion of the budget, don't we undermine the ability of the Commission to implement the entire Treaty?

Answer: The budget proposed by the Pacific Salmon Commission envisions the program to be conducted jointly by tribes, states and Federal agencies. Depending on the FY 1987 appropriations to the Treaty implementing parties, the Commission will allocate the funds required to optimize commitments under the Treaty.

Question: I understand the Bureau has given direction to the Northwest and Columbia River Fisheries Commissions to use a grant instead of a contract vehicle as the appropriate funding mechanism to receive Treaty funds. Can you elaborate on this decision, its rationale and the overall implications?

Answer: Bureau contracting regulations preclude issuing a new contract with an inter-tribal commission in the absence of supporting resolutions from each member tribe which would benefit from the proposed contract. The commissions did not have adequate time to get the 24 supporting resolutions. Consequently, the grant approach was the only option the Bureau had in getting the money to the tribes in time to initiate the required work. There are no negative implications to the grant approach.

Question: Do contract support costs accompany grant awards? Do you believe it is reasonable to require the commissions to use the "grant" route if it is not accompanied by overhead support?

Answer: Contract support funding does not normally accompany grant awards. Because of Congressional direction, additional funds are being provided to cover the indirect costs of the two inter-tribal commissions. It is anticipated that supporting tribal resolutions will be obtained in time to use the contracting approach in FY 1987.

Question: Considering how late in the year it is, do you believe it is reasonable to require the Commissions to enter into a new 638 contract in order to receive contract support funds? Have the Commissions communicated to you any difficulties they foresee in going through this process? Wouldn't it be faster and easier to simply modify their existing 638 contract to include these projects rather than starting from the beginning, if contracts are used instead of grants?

Answer: The Bureau entered into grants with the commissions in order to expedite the implementation of the new program. The activities involve a "new" program. Therefore, they cannot be modified into the existing contracts without each tribe concurring by resolution.

Question: Is there a difference in the way you treat grants and contracts if you are included in a "continuing resolution" at the end of the fiscal year rather than a separate appropriations bill? As you know, the bulk of fishery research work comes in late September, October and November, so any administrative delays during that period severely impact the Treaty Commission's research program. What will it take to assure that the Pacific Salmon Commission funds become part of the individual Fisheries Commission's base funding and that program continuity is assured between the fiscal years?

Answer: No, there is no difference between appropriations received under a continuing resolution and a separate appropriations bill. As far as Pacific Salmon Treaty funds becoming part of the "base funding" is concerned, if the work being performed is of a continuing and sustained nature, i.e., not "project" oriented, we would expect to maintain current funding levels to the extent possible within our total available resources each year. Ongoing program operations during periods of time covered by temporary continuing resolutions (i.e., in absence of a final appropriation) can proceed at whatever rate authorized by the resolution (usually a percentage of the annual rate of the previous year's operating level). Only "new starts" are adversely affected by continuing resolutions (and are usually prohibited).

Self-Determination Grant Reduction

Question: I notice in your budget submission that you plan to transfer $4 million from self-determination grants to contract support for FY 1987. What are self-determination grants used for? What would the impact of such a transfer be on small tribes? What is their average size? How does the BIA expect small tribes to fill this funding void considering the parallel planned reduction of the Small Tribes Core Management Grant program?

Answer: The Bureau is not proposing to transfer $4 million from self-determination grants to contract support. A major purpose of these grants was to help tribes achieve the capability of contracting by installing finance, personnel, property systems and the like. As these capabilities are achieved, the need for grants decrease. However, as the capability and incidence of contracting increases, so does the level of indirect costs associated with new contracts. These indirect costs are usually to cover the costs of operating the same finance and other systems which were originally developed under the grant mechanism. Hence, there is a similarity in the use of funds but their purposes differ.

For the most part, tribes use self-determination grant funds to strengthen tribal governments and enhance their capability to contract under P.L. 93-638. The impact of the proposed reduction is likely to be greater on small tribes than on larger tribes because the smaller tribes rely more on such grants. We could lessen the impact by considering a "hold harmless" provision for the very small tribes, i.e., those tribes receiving grants of $10,000 or less could be held harmless (receive the same amount as they received in FY 1986).

We do not know how many small tribes will be affected by the reduced funding because the grant program is at the tribe/agency level under the Indian Priority System (IPS). Tribes under the IPS set their own priorities for grant funds, and tribal priorities change from year to year. It is probable that in excess of 260 tribes could be impacted by the reduction.

We do not know the average size (population) of the tribes using the self-determination grants, but can say it is the smaller tribes which tend to use the grant program. At this time, it is difficult to assess what negative impacts, if any, will result for tribes currently covered by the two grant programs.

The Bureau's decision to reduce grant funds in order to cover the contract support fund (CSF) requirements was based on the following:

- Funding of the CSF requirement is considered vital as it significantly impacts on the level of services as well as a tribe's ability to administer contracts under P.L. 93-638.
- Many small tribes contract and will thus also benefit from the increase in contract support.
- We expect to consider instituting a "hold harmless" provision to lessen the impact on very small tribes.

Road Construction

Question: The BIA Road Construction FY 1987 budget request reduces the contract authority allocations from the Highway Trust Fund by $25 million, or one fourth of the FY 1986 budget. Funds for State highways were only cut 10%. Considering the deteriorated condition of reservation roads nationwide and the obvious local employment opportunities through road construction projects, how is this major reduction justified?

Answer: The decision on the level of funding for the Indian roads portion of the Highway Trust Fund allocations, for FY 1987 was made by the Department of Transportation (DOT) and the Office of Management and Budget.

The DOT justification for the level of funding proposed was "the level is reasonable when overall national highway transportation needs are considered within the framework of a revenue-neutral highway bill that complies with the spirit of the Gramm-Rudman-Hollings balanced budget legislation." Further information regarding this determination should be addressed to the Department of Transportation.

Small Tribes Core Management Grant Program

Question: This program provides direct BIA assistance to those Tribal governments identified as unstable administratively due to lack of financial resources. Last year, you stated in your justifications that many small tribes lack financial resources to meet basic management needs because the level of funding for most Federal Assistance grants is based on population size. In your FY 1987 request, you reduce this program by $1.7 million with the justification that Tribal governments have access to other Federal assistance. Is there any hard data available, nationwide, to support a reduced need for this program among these most vulnerable Tribal Governments and their successful access to other Federal programs as claimed in your justification?

Answer: Although we currently have no data which indicates the actual need nationwide, by tribe, we do have information from evaluation reports that, after two or three years of funding under the Core Management program, some tribes are receiving grants from other agencies and are now contracting Bureau programs. These tribes will "graduate" from the program thereby allowing the Bureau to assist more of the most vulnerable of the small tribes. It must also be noted that the Core Management program is not an entitlement program, nor is funding based solely on need. The program is based on need, merit and performance for renewal or continuation grants. That is, tribal applicants must have specific needs, demonstrate by their application the potential to meet the needs or overcome problems, and to have made good progress toward prior year's objectives, in the case of a renewal grant. Tribes will receive grants as they become ready and other tribes are phased out of the program.

Contract Support Funds

Question: Although you have included an increase in contract support funds for new P.L. 93-638 contracts in your budget request, I believe we still have a problem with existing contracts and that many tribes are being forced to reduce their program funds to meet the shortfall in contract support. What is the level of appropriations that would be needed, nationwide, to fund all existing P.L. 93-638 contracts with contract support funds to meet the Inspector General's negotiated rates? Will this appropriation level represent sufficient funding to meet 100% of contract support fund needs without reducing direct program funding levels?

Answer: The Bureau estimates that the level of funding required to fully meet the Inspector General's negotiated indirect cost rates for existing contracts would be approximately $7.4 million. This appropriation would meet 100% of contract support funds needs without reducing direct program funding levels.

Tribe/Agency Appropriations Consolidation

Question: You propose a major transfer of program funding into a Tribe-Agency account with the expressed purpose of giving Tribes greater flexibility. It would appear, however, that specific trust related programs could lose their identification in this new budget scheme. What policies are planned to ensure that program categories, such as forestry and fisheries, maintain their identity and appropriation levels? What efforts have been made to consult tribal opinions on this apparent change in policy?

Answer: The budget development process which currently exists for programs on the Indian Priority System (IPS) already offers the opportunity to tribes to set funding levels for trust related programs such as forestry and fisheries. However, since the process is a Federal budget development process, the responsibility for submitting a viable budget proposal for all programs included in the IPS lies with the agency superintendent. Our planning instructions to the superintendents for many years have clearly established the need for action on their part to ensure that adequate funding is provided for programs which involve fulfilling the Government's trust responsibility. In the event, a tribe or tribes propose to reduce a trust related program below the level determined adequate by the superintendent to enable him to carry out his responsibilities, he is expected to notify the tribe(s) and negotiate a change to restore adequate funding. If the negotiations are unsuccessful, the superintendent has been instructed to submit an alternative budget. If alternative budgets result, these are submitted to the Area Director for a decision.

The Area Director is expected to make an independent judgement as to the adequacy of funding and either select one of the two submitted budgets, or enter into

negotiations with all concerned parties to develop a new budget. In the event a tribe or tribes is (are) not in agreement with the Area Director's decision in a budget dispute, an appeal may be filed with the Assistant Secretary - Indian Affairs, whose decision is final. Since the IPS process will not be changed under the FY 1987 tribe/agency proposal, we believe adequate safeguards exist to prevent a loss of identification of funds for trust related programs during the planning process.

Our anticipated operating procedures after funds are appropriated to a Tribe/Agency Operations budget activity, do not permit unilateral funding transfers between programs by tribes. Only if several specific programs are included within a consolidated contract/grant or a cooperative agreement, would more liberal fund transfer procedures become possible and then only with the prior concurrence of the Bureau. At this time, the proposal requires Bureau management to approve the original program plans included in the IPS (and budget request to Congress), as well as any proposed changes to the plan. In addition, any proposed changes to be approved locally (by the agency superintendent) would have to be less than 25% of the individual program funds (not to exceed $250,000). If changes in excess of these limits were proposed, regular reprogramming procedures as currently specified by the Appropriations Committees would be applied.

Regarding consultations with tribes on the proposed budget structure change, only limited, informal consultations have occurred. However, since the planning for all programs on the IPS have always been on a "consolidated" basis, and we have in fact consulted with tribes on their FY 1987 priorities, we believe an element of consultation on the basic proposal has occurred. In addition, we have had numerous tribes indicate a desire for the opportunity to have more flexibility in the use of actual appropriations received primarily because of the length of time between program planning and actual program operations (approximately 18 months).

Question: Who would set Indian Priorities in a multi-tribe agency? Wouldn't BIA necessarily make the priority decisions in these situations, effectively defeating the purpose of the line-item switch?

Answer: The procedures for the setting of priorities at multi-tribe agencies would not change because of this proposal. The IPS is currently used by both single and multi-tribe agencies to establish tribal priorties. Multi-tribe situations pose an inherently more difficult task for the Bureau to obtain meaningful participation in priority setting. Obviously, every tribe's socio-economic situation is not the same, and therefore, each tribe can have different priorities. The superintendents at multi-tribe agencies have at least two options to obtain tribal priority input; both options are being used. The superintendent can develop a consolidated budget in consultation with all the tribes using a consensus priority ranking. Alternatively, the base funding for the agency can be divided among the individual tribes or among several groups of tribes, with separate budgets and priority rankings being developed. Since the IPS process would continue under the proposal, there will be no loss of tribal input in multi-tribal situations.

Law Enforcement

Question: What assessments have been made to determine current and projected Tribal government law enforcement needs? How were law enforcement funds distributed to improve Tribal law enforcement capabilities from the FY 1984 appropriations increase of $4.7 million? What portion of these funds were added to the Portland Area Base amount? How does the BIA plan to address the obvious law enforcement needs of the Quilete Tribe which currently receives no Federal law enforcement assistance?

Answer: Area Office Law Enforcement staffs maintain continual assessments through their daily contacts. Periodically, special assessments are made by the Central Office such as in April, 1985; September, 1985; and one currently in process.

We are not aware of the FY 1984 appropriations increase referenced in the question nor any distribution of said increase. Additionally, the Portland Area staff were unable to provide any information on this matter. In FY 1985, the law enforcement program received a $9,016,000 increase; $410,000 of this increase was added to the Portland Area base. The Area Office staff determined the distribution of this to programs in their area. The Quilete Tribal Reservation is totally under the jurisdiction of the State of Washington under P.L. 83-280. Therefore, the Bureau has no jursidiction. Resultantly, there is no provision for a law enforcement program or funding.

Forest Development

Question: Most of your proposed reduction in the Forestry budget will be taken from the Forestry Development account. Why is this source of Tribal funding targeted to absorb nearly all of the cuts in your Forestry budget?

Answer: The proposed funding level in the FY 1987 budget will have slight impact on the long range goals of this on-going program. The forest development program will continue on a schedule that targets completion in the 1990's.

Question: Why have you increased the base budgets of the Central Office Operations and the Area Office Operations from FY 1986 to FY 1987 in forestry, while reducing Tribal programs?

Answer: The budget for the Central and Area Office's has not increased in total. In prior years, funds in addition to the base were withheld from the Timber Sale Administration (TSA) funding for the operation of these offices. With the movement of the TSA funds to the Indian Priority System (IPS), funds were transferred to the Central and Area Office base to maintain operation of these offices. The Area office budget was reduced $57,000 in response to the IPS for FY 1987.

Fisheries

Question: You have again proposed a $347,000 reduction in the Tribal hatcheries O&M program, and misnamed as a "Congressional add-on" FY 1986 funds we restored to FY 1985 levels. Since the hatcheries O&M appropriations have been maintained at FY 1985 levels and provide an important contribution to the nation's fisheries resources, how can these reductions continue to be justified?

Answer: The $347,000 reduction is to be applied generally to hatchery programs that have been added in recent years. When prorated to all hatchery operations the $347,000 reduction will not result in severe detrimental effects to any one hatchery.

Human Resources

Question: How do you justify a 36% reduction in Indian Child Welfare funding?

Answer: The decrease in ICWA grants consists of discontinuing the program in Alaska and for urban organizations, both areas which can receive funding from other sources which are available. The BIA will maintain its family community service contracts with Alaska Native organizations, which in FY 1986 exceeded $1 million. Additionally, the decision to discontinue off-reservation urban organization services will allow the Bureau to focus its resources upon its basic constituency of federally recognized tribes.

Question: Although tribes have become much more capable of delivering appropriate social services to their tribal members, less than one-third now contract for delivery of these services. What initiatives and corresponding appropriations would be necessary to increase participation to 50%?

Answer: In terms of the total social services funding more than 60% is now expended in contracts to tribes. This figure is comparable to other programs in BIA and no new initiatives are being planned to raise the participation in social services. In addition, under P.L. 93-638 the decision to contract to operate BIA programs is a tribal decision, not a Bureau decision.

Johnson O'Malley (JOM) Program

Question: Please describe the BIA consultation process with tribal governments on the proposed transfer of JOM to the Department of Education and identify the basis for tribal support of this policy. What policy mechanisms have been proposed to ensure Tribal participation and control over JOM programs with local education agencies agencies comparable to the current system? How many Tribally-controlled JOM programs will be eliminated under the proposed transfer and what is their collective appropriations level?

Answer: Although there has been no formal consultation process directly involving the tribes on the part of BIA, prior to including the JOM consolidation with the Title IV program in the President's Budget, the U.S. Department of Education has met extensively with Indian organizations in the development of their proposed legislation. As a result of these meetings and dicussions with staff of the Bureau of Indian Affairs, the legislation requires the establishment of an Indian Education Advisory Committee at the State level as well as Indian Education Committees at the local level. Both committees must have a majority Indian membership. Project applications from the local level must be approved by the Indian Education Committee before they will be accepted by the state. If agreement cannot be reached, the state may contract directly with the tribes for services to Indian children in local school districts.

In FY 1986, there were 216 JOM contracts with tribes or tribal organizations which received approximately $12.9 million.

Higher Education

Question: How many eligible American Indian students were refused post-secondary financial assistance in FY 1985 due to lack of financial resources and what is the estimated level of appropriations necessary to meet the demand?

Answer: Because the Higher Education scholarship program is funded under the Indian Priority System, the funding levels provided to eligible students are determined by each individual tribe. Based upon these tribal determinations in the budget process during FY 1985, approximately 3,300 eligible undergraduate students did not receive funding under the Higher Education Scholarship Program.

As noted, this is a program under the Indian Priority System, with funding levels established by the tribes. The tribes have the option of placing a high priority on this program during the budget process, and thereby increasing the funding available for these students. Because there are a number of variables which may affect the number of students to be funded, the tribes are encouraged to consider such factors as eligibility criteria, the level of administrative costs, and the maximum grant size, in making their determinations and in administering the program.

Social Services

Question: Since Federal funds for alcoholism in IHS are utilized for treatment rather than prevention and tribal governments are excluded from Federal resources through the National Institute on Drug Abuse and the Justice Department's Office of Juvenile Justice & Delinquency Prevention, how does BIA justify reductions or elimination of tribally-operated youth opportunity programs?

Answer: The BIA has no authority in the social services program for funding of alcoholism preventive programs for youth.

WITNESSES

	Page
Arthur, C.B	1
Arkinson, Hawley	1, 169
Bavasi, C.J	1, 169
Bitsuie, Roman	1
Boyd, R.J	169
Brown, L.L	389
Christensen, S.H	389
Corwin, T.M	389
Craft, Fred	169
Crosby, Shirley	455
Davenport, L.F	389
Denetsosie, Mr	169
Eberhard Eric	169
Elbert, H.E	455
Esquerra, R.L	455
Hartz, Gary	1
Itteilag, Tony	455
Kahn, Hakim	389
Latta, Frank	455
Martin, E.D	273
Massetto, Sandra	1, 169
McAlister, M.J	1, 169
Muys, J.C	1
Nordwall, Wayne	455
Pearson, B.F	273
Rhoades, E.R	273
Riso, Gerald	455
Roach, M.H	273
Ryan, F.A	455
Sidney, Ivan	1
Stangl, T.A	455
Swimmer, R.O	1, 169, 455
Tessler, P.M	1, 169
Watkins, R.A., Jr	455
Zah, Peterson	1

654

INDEX

Page

- Bureau of Indian Affairs 455
  - Alaska:
    - Alaska Reductions 530
    - BIA Response to Governor Sheffield's Letter on Alaska Reductions 538
    - Letter from State of Alaska to Congressman Yates 534
    - Reduction of Funds—Alaska 556
    - 1985 Study on the Alaska Native Land Claims Settlement Act 530
  - Arapaho and Shoshone Oil and Gas Leases 526
    - Shoshone Arapaho Lease Cancellation on the Wind River Reservation 527
    - Status of Pending Petition 528
  - Biographies of witnesses:
    - Hazel E. Elbert 463
    - Ronald L. Esquerra 463
    - Frank A. Ryan 463
    - Ross O. Swimmer 463
    - Henrietta Whiteman 463
  - Budget Reductions:
    - FY 1987 Budget Reductions 464
  - Construction:
    - Alamo Navajo School 561
      - Letter to Congressman Yates 562
    - Construction Cuts 465
    - Construction Priority List 492
    - Facilities Improvement & Repair:
      - Facilities Improvement Backlog 492
      - Facilities Improvement and Repair 493
    - FY 1987 FI&R Projects 494
    - FY 1987 FI&R Tentative Project Listing 497
      - Status of Facilities Inventory 492
    - New Construction and FI&R 501
    - New School Construction 465
    - Rocky Boy High School 467
  - Education 503
    - Flandreau Indian School 566
    - Haskell Indian School 567
    - Hopi High School 564
    - Cost of Operating Pinon Dormitory and Hopi High School 564
    - Johnson O'Malley 491
      - JOM Transfer 464
    - New School Construction 557
    - Phoenix Indian School:
      - Copy of Report on Impact on Phoenix School 565

Bureau of Indian Affairs—Continued

Education—Continued

Phoenix Indian School—Continued

- Enrollment of Phoenix Indian School 565
- Impact on Phoenix Indian School 564
- School Accreditation 560
- School Expansions 564
- SIPI Indian School 568
- Special Higher Education Scholarships 565

Fisheries:

- Chum Salmon Research 545
  - Funding for Research for Chum Salmon in Upper Puget Sound 545
- Fisheries Reductions 557
- FY 1986 Funding of Intertribal Fish Commission 546
- U.S.-Canada Salmon Interception Treaty 543
  - Apportionment of United States/Canada Pacific Salmon Treaty Funds 544
  - Funds for Fish Sampling at Bonneville Dam 544
  - Funding for Fish Sampling at Bonneville Dam 544
  - Funding for Spawing Surveys 545
  - Funding for Spawning Surveys and Specific Drainages in Oregon 545

Forestry:

- BIA Expenditure Per Acre for Forest Management 549
- Forestry Management 548
- Forestry Management Backlog 539
- Transfer of Forest Development Funds to Tribe/Agency 539

Gramm-Rudman-Hollings Exemptions 558

Gramm-Rudman-Hollings Reductions 557

Klamath Tribe 546

Law Enforcement 568

Minerals Management Service 513
- Minerals Management 504
  - Deficiencies in Handling Royalties Leases 507
  - Indian Gas Royalty Payment Problems 505
  - Interim Response to Report of the Surveys & Investigations Staff 525
  - Memorandum for the Chairman re: Leases and Permits 515
  - Minerals and mining Royalties 552

Navajo-Hopi Relocation 469
- Compliants Against BIA Behavior—Navajo-Hopi Settlement 555
- Funding for Housing and Development 491
- July 6 Deadline 470
- Law Enforcement Photographing 484
- Letter to Peterson Zah, Chairman Navajo Tribe 476
- Letter to Peterson Zah, Chairman Navajo Tribe 488
- Maintaining Law and Order 469
- Memorandum of Understanding 478
- Navajo-Hopi Settlement Program 569
- Relocation Commission 484
- Status of Navajo-Hopi Relocation 472
- Status of Pilot Project 485
- Status of Udall-McCain Legislation 475
- Water Problems on New Land 485

Questions submitted by House Subcommittee on Appropriations 574

Reorganization of Central Office Management 529

656

Page
Bureau of Indian Affairs—Continued
  Statement of:
    Ross O. Swimmer, Assistant Secretary—Indian Affairs 456
    Summary of Statement 463
  Water Resources 569
    Letter to Secretary Hodel 571

Indian Education 389
  Additional Funding for the National Advisory Council 450–451
  Administrative Cost Savings 444
  Assistance to States and Indian Communities 433–434
  Assurance That Projects Will Maintain Quality 450
  Biographical Sketch, Lawrence F. Davenport 398
  Biographical Sketch, Lawrence L. Brown, III 399–400
  Biographical Sketch, Thomas M. Corwin 401
  Budget Request Without Legislative Change 403
  Concern of Indian Leaders about State-Tribal Relationship 434–435
  Consultation on Legislative Proposal 407
  Continuation of 1986 Testimony 416–417
  Contract Services 413–414
  Coordination With the Bureau of Indian Affairs 437
  Cost Efficiency of State Grant Program 431
  Department of Education Funding Request for Indian Education 405–406
  Development of Legislation 407–408
  Discussion With Congressmen 413
  Documentation of Eligibility for FY 1986 Part A Grants 432
  Economic Status of Indian Children 410
  Economically Disadvantaged Indian Children 409
  Education Budget Request 410–411
  Education Personnel Development 430
  Eligibility Requirements 432
  Eligible Indian Children 414
  Elimination of Adult Education Demonstration Projects 445–446
  Estimate of Education Funds Benefiting Indians 421–428
  Estimated Savings 420
  Evaluation of Indian-Controlled Schools 444
  Exemption from Gramm-Rudman-Hollings 420
  Explanation of Child Count 417
  FY 1987 Budget Request Under Current Legislation 404
  FY 1988 Budget 406–407
  Fiscal Year 1986 Hearing 414–416
  Funding Discretionary Programs in FY 1986 and FY 1987 441
  Funds Benefiting Indians 420
  Gramm-Rudman-Hollings Sequester for Indian Adult Education 446
  Groups Consulted on Legislative Proposal 407
  History of Grants 437
  Implementation Timetable 449–450
  Improvement of part C Indian Education Program 447–449
  Indian Child Count 418
  Indian Children in Public Schools 430
  Indian Education Activities Table 443
  Indian Fellowships 411–412, 441
  Indian Parent Committees 431–432
  Legislative Proposal 402

657

Page

Indian Education—Continued
Level of Support Available from Student Financial Aid Programs 443
Members of the National Advisory Council on Indian Education 451-453
Merger With Johnson-O'Malley 406, 408-409
Numbers of Children Served 416
OMB Reduciton in Adult Education Funding 447
Opening Statement 391-397
Operations Without New Legislation 402-403
Poverty and Income Date on Indians 409
Problems Caused by Current Programs for Indian Education 419-420
Propgram Administration 449
Progress in Indian Adult Education 445
Proposed Formula Grant for Indian Education 438-439
Proposed State Grant Program for Indian Children 429
Proposed Teacher Training Initiative 440
Reaction to Legislative Proposal 412
Reduction in Chapter 1 funds 416
Resource and Evaluation Centers 440-441
State Role in Indian Education 435-436
State Share of Grants for Indian Children 433
State Use of Its Share of the State Grant for Indian Education 436-437
Targeting Aid 433
Total Number of Indian Children 429-430
Tribal Objectives 412-413
Witness List 389

Indian Health Service 273
Administrative Provisions 343
Albuquerque Headquarters Functions 377
Alcoholism 365, 380
Anchorage Hospital 353
Biographical Sketch—Edward D. Martin, M.D 274
Capitation 359, 382
Community Health Representatives Program 371
Contract Care 365, 382
Cost Containment 371
Dental Services 361
Direct Operations 367, 384
Eligibility for Services 345, 370
Facilities Construction 351, 376
Hospital Accreditation 374
Hospitals and Clinics 360
Impact of Gramm-Rudman 276, 334
Indian Children's Program 380
Indian Health Manpower 383
Indian Health Scholarships 375
Indian Teenage Suicides 369
Indirect Costs 349
Kotzebue Hospital 356
Maintenance and Repair 365, 373
Medicare/Medicaid Collections 334
Mental Health 363, 372
Modernization and Repair 386
Opening Statement 329

658

Page

Indian Health Service—Continued

Outpatient Clinics 356
Parity 359
Parker, Arizona and Shiprock, New Mexico 357
Personnel Quarters 374
Personnel Shortages 358
Pine Ridge Hospital 354, 355
Private Insurance Collections 337
Program Area Reviews 360
Proposed Program Reductions 300, 372
Proposed Reductions in FY 1986 .... 300, 333
Questions Submitted for the Record 369
Reimbursements 334, 337, 361, 371
Report on Surgery 354
Resource Allocation Methodology 348, 375
Rosebud Hospital 353, 354
Sacaton Hospital 355
Sanitation Facilities 359, 370, 377
Sanitation Training 374
Shiprock, New Mexico and Parker, Arizona 357
Staffing for New Facilities 360
Toppenish Health Clinic 356
Tribal Contracts 349
Tribal Management 375, 384
Tucson Functions 378
Unobligated Funds 357
Urban Program 367, 383
Wagner Health Clinic 354

Navajo and Hopi Indian Relocation Commission 169

BIA:

  Budget 222
  Housing cost estimate 219
  Planning 176, 220
  Progress 183
  Responsibilities 187
BIA's possible counseling role 221
Big Mountain 223, 224

Commission:

  Funds available for survey 216
  Progress 184, 187
Commissioner receipt of notice 195
Completion of relocation 188
Congressional priorities 205
Counseling 207
Deadline 193
Economic development 186
Eligibility of the new lands 209
Emergency move process 201
Enhanced level of effort 208
Enhanced level of operation 190
Forecast of numbers per site option 211
HPL residents 175
Individuals awaiting relocation 174, 189

659

Page

Navajo and Hopi Indian Relocation Commission—Continued
- Investigators:
  - Notes ... 203
  - Report ... 194
- Involuntary relocatees ... 225
- July deadline ... 174
- Living condition of those awaiting relocation ... 191
- Need for reprogramming ... 217
- New lands:
  - Communities ... 206
  - Development ... 209
  - Water qualify ... 228
- NHIRC/BIA MOV ... 176
- Physical location of clients awaiting relocation ... 201
- Priorities for congressional direction ... 192
- Rare Metals community ... 191
- Relocatees awaiting benefits ... 193
- Reprogramming request ... 183
- Required funding ... 185
- Resources for expanded survey ... 215
- Responsibility for non-HPL clients ... 210
- Site selection rationale ... 212, 213
- Staff needs for increased activity ... 211
- Statement of Ralph A. Watkins, Jr ... 169
- Survey of those off the HPL ... 214
- Surveying those who moved pursuant to the act ... 207
- Tribal:
  - Assistance/cooperation ... 227
  - Involvement in the MOU ... 232
  - Notification to commissioners ... 194, 195
- Use of bonuses for relief ... 206
- Water project ... 230, 231
- 1987 operational funds ... 218

Navajo and Hopi Indian Relocation Commission Overview ... 1
- BIA authority ... 12
- BIA proposal plan ... 20, 25
- Cash payment ... 64
- Comments from Hopi Elder ... 42
- Commission:
  - Counseling ... 7
  - Legal staff ... 127
  - Plan ... 4
  - Planning and relocatee input ... 34
  - Record of success or failure ... 5
  - Vs. BIA responsibility ... 167
- Commission/BIA memorandum ... 165
- Commissioner visit to the HPL ... 62
- Completion of Commission's statement ... 142
- Congressional:
  - Intent on priorities ... 160
  - Report ... 163
- Divided responsibility ... 18
- Economic development ... 40, 41

660

Page

Navajo and Hopi Indian Relocation Commission Overview—Continued

Economic opportunity ... 145
FY 1987 budget request ... 10
Grazing permits ... 161
Historical review of dispute ... 64
Home site leases ... 144
Infrastructure on new lands ... 56
Interpretation of P.L. 93-531 ... 57
Memorandum of Understanding ... 19
Navajo Tribal Chairman's statement ... 43
New land tours ... 37
New lands planning ... 161
New lands ... 10
News lands funding ... 10
Passage of P.L. 93-531 ... 9
Pending court cases ... 3
Planning process and evaluation ... 37
Planning process and relocate input ... 39
Potential relocation sites ... 145
Program completion ... 18
Program history and costs ... 2
Public comments regarding relocation ... 2
Range management plans ... 164
Relocatee:
  And tribal input ... 35, 36
  Approval ... 163
  Retention of housing ... 6
  Remaining on HPL ... 12, 13, 15
  Remaining to be moved ... 16, 143
Relocation Commission statement ... 125
Rural community plan ... 160
Santa Fe and Pacific Railway statement ... 70
Settlement possibilities ... 142
Settlement proposals ... 3
Settlement ... 63
Statement of:
  Mr. Sidney ... 66
  Peterson Zah ... 46
  Ralph A. Watkins, Jr ... 147
  Ross Swimmer ... 22
Statistics ... 58
Time required for completion of relocation ... 17
Tribal:
  And relocatee consultation ... 60
  Budget ... 59
  Consultation ... 61
Willingness of relocatees to comply ... 56

661